

# Vermont Legislative Joint Fiscal Office

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## *ISSUE BRIEF*

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### **Employer Responsibility under the Affordable Care Act and Current Vermont Law:**

#### *A comparison of Vermont's Employer Assessment and the ACA Penalty*

Under the Affordable Care Act (ACA) larger employers who don't provide "affordable" coverage could face penalties starting 2014. Under current Vermont state law, employers pay an assessment for every uncovered employee in excess of four full-time equivalents (FTEs). Although the two laws are very different, there have been legitimate questions about the potential overlap and impacts of the two. The purpose of this document is to help provide clarity on this issue.

It should be noted that Act 48 of 2011 required the Secretary of Administration to consider the Vermont employer assessment when developing the financing plan.<sup>1</sup> Given its inherent relationship to the Catamount Health program, and a reasonable assumption that the Catamount Health program will cease to exist after 2014, there is a strong likelihood the legislature and administration may consider changes. However, at this time we cannot speculate as to what recommendations will be made concerning the future of the employer assessment – such as whether to make revisions or repeal it altogether. Given this acknowledgement, the following document speaks to the employer assessment as it exists in current law, with the understanding that it may change in the 2013 legislative session.

#### **Who pays and how much?**

The Vermont employer assessment and the ACA penalty have different formulas for determining who pays and how much. For instance, under the ACA, only "large employers" (defined as an employer with more than 50 FTEs) are subject to the penalty, whereas under the Vermont assessment there are no employer size requirements. The following tables provide further information concerning who pays and how much under both the state assessment<sup>2</sup> and the ACA penalty.<sup>3</sup>

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<sup>1</sup> Act 48 of 2011, Sec. 9(b)(1).

<sup>2</sup> 21 V.S.A. § 2003

<sup>3</sup> See Congressional Research Service Report R41159, "Summary of Potential Penalties under the Patient Protection and Affordable Care Act (PPACA)", June 2, 2010.

Who pays?

Vermont Employer Assessment	ACA Penalty
<p>Employers who:</p> <ul style="list-style-type: none"> <li>• <u>Do not offer to pay</u> any part of the costs of health coverage for employees</li> <li>• Have employees who are <u>not eligible</u> for employer-sponsored health coverage</li> <li>• Offers insurance but <u>employee does not accept coverage</u> and <u>has no other health coverage</u></li> </ul> <p>Note: No employer size requirements, but first four “uncovered” FTE’s excluded.</p>	<p>Employers who:</p> <ul style="list-style-type: none"> <li>• Employ at least 50 FTE’s</li> <li>• Have at least one full-time employee that obtains a premium tax credit in the exchange.</li> <li>• Does not offer coverage to its workers, or</li> <li>• Does offer but plan does not pay at least 60% of covered health care expenses for a typical population, or</li> <li>• Does offer but employee has to pay more than 9.5% of family income for the employee’s premium for coverage.</li> </ul>

How much?

Vermont Employer Assessment	ACA Penalty
<ul style="list-style-type: none"> <li>• Employers currently pay \$119.12 quarterly (476.48 annually) for every “uncovered” FTE in excess of four FTE’s.</li> <li>• Assessment is indexed to increase at the same percent as increases in the Catamount Health product.</li> <li>• Paid <i>quarterly</i></li> <li>• A useful diagram from the VT DOL can be found in <a href="#">Appendix A</a>.</li> </ul>	<p>Penalty depends on circumstance:</p> <ul style="list-style-type: none"> <li>• An employer that <u>does not offer</u> coverage for its employees will pay: <ul style="list-style-type: none"> <li>➤ Number of FTEs minus 30 multiplied by \$2,000.<sup>4</sup></li> </ul> </li> <li>• An employer that <u>does offer</u> coverage but doesn’t meet minimum coverage or affordability requirements will pay the lesser of the following: <ul style="list-style-type: none"> <li>➤ Number of FTEs minus 30 multiplied by \$2,000.<sup>5</sup></li> <li>➤ Number of FTEs who receive tax credits for exchange multiplied by \$3,000.</li> </ul> </li> <li>• The penalty is increased each year by the growth of insurance premiums.</li> <li>• Paid <i>monthly</i> (penalty ÷ 12 months)</li> <li>• A useful diagram from the Henry J. Kaiser Family Foundation can be found in <a href="#">Appendix B</a>.</li> </ul>

<sup>4</sup> The first 30 FTEs are exempt from the penalty.

<sup>5</sup> The first 30 FTEs are exempt from the penalty.

### **Will employers be required to pay both the Vermont employer assessment and the ACA penalty?**

Under current Vermont law (making no assumptions of potential changes prior to 2014) there may be some large employers who could be subject to both the Vermont employer assessment and the ACA penalty but at this time it is difficult to estimate how many.

According to the Vermont Department of Labor (VTDOL), the majority of businesses in Vermont are small businesses with approximately 96% of businesses employing less than 50 people. Of the large businesses, 98% of businesses with 50-249 employees offer health insurance and 100% businesses with 250 or more employees offer insurance.<sup>6</sup> However, the data also shows that while the number of large businesses offering health insurance is extremely high, take-up is a bit more modest. However, take-up in employer-sponsored plans will likely increase once the individual mandate takes effect in 2014.

<b>Health Insurance Benefits Offered</b>	<b>50-249 employees</b>	<b>250+ employees</b>
<i>Health insurance offered</i>	98%	100%
<i>Workers offered insurance as % of total workers in firm</i>	75%	65%
<i>Enrolled workers as a % of those workers offered insurance</i>	69%	64%
<i>Enrolled workers as a % of total workers in firm</i>	52%	46%

Source: VT Department of Labor 2011 Fringe Benefit Study

It should be noted that the VTDOL survey measured by employer size and not by FTE's which differ in that total employer size includes part-time employees. That said it is still safe to assume that the overwhelming majority of employers with 50 or more FTEs offer health insurance, and yet could still be subject to the ACA penalty if:

- the insurance plan does not pay for at least 60% of covered health expenses
- any employees have to pay more than 9.5% of family income for the employer coverage
- any of these businesses decide to completely drop their insurance coverage

According to data provided by the VTDOL, which collects the Vermont employer assessment, of the employers that paid the assessment in SFY 2012, only 8% were large businesses with 50 or more employees yet they accounted for 64% of the "uncovered employees" subject to the employer assessment. This is an indicator that while a high percentage of large employers offer health insurance, it is plausible there will be large businesses that may have to pay both the Vermont employer assessment (under current Vermont law) and the ACA penalty if their health coverage is not considered affordable or comprehensive enough as laid out in the table on page one labeled "Who Pays?".

The following scenarios are designed to illustrate circumstances where large employers may or may not have to pay both the Vermont employer assessment and the ACA penalty.

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<sup>6</sup> 2011 Fringe Benefit Survey, April 2012. Vermont Department of Labor, Economic and Labor Market Information  
VT LEG 281881.1

<b>Sample Scenarios</b> (Large employer = at least 50 FTE's)	<b>Subject to VT Employer Assessment?</b>	<b>Subject to ACA Penalty?</b>
Large Employer <b>does not offer</b> coverage, and <b>no full-time employees</b> receive premium tax credits for exchange coverage.	Yes	No
Large Employer <b>does not offer</b> coverage, and <b>one or more full-time employees</b> receive premium tax credits for exchange coverage.	Yes	Yes
Large Employer <b>offers</b> coverage, has no "uncovered" employees <sup>7</sup> , and <b>no full-time employees</b> receive premium tax credits for exchange coverage.	No	No
Large Employer <b>offers</b> coverage, has no "uncovered" employees by state definition <sup>8</sup> , but at least <b>one or more full-time employees</b> receive premium tax credits for exchange coverage.	No	Yes

Further analysis would be required to determine how many businesses might be subject to both. In addition, we make no speculation of whether employers might drop coverage as to allow their employees to collect federal premium tax credits in the exchange or enroll in Green Mountain Care in 2017 and beyond.

### Further discussion

As mentioned, this comparison uses the employer assessment as it exists in current law and does not speculate on what future legislative changes may occur, only that it is likely there will be some changes. For instance, the employer assessment increases are indexed to increases in Catamount premiums. If Catamount Health ceases to exist, but the employer assessment remains, then it would have to be indexed to something else or not indexed at all.

In addition, it is difficult to speculate if or how many employers might drop their coverage once the exchanges go into effect. Some employers who offer insurance may decide that it is in the best interest of their business and/or their employees to drop their insurance and pay the penalty (if they are subject to it) so their employees can receive federal tax credits in the exchange.<sup>9</sup>

Finally, as mentioned earlier, take-up in employer-sponsored plans will likely increase once the individual mandate takes effect in 2014. However, how many more people will enroll in their employer-sponsored insurance plan and what impact that might have on the current employer assessment revenues is difficult to determine at this time.

<sup>7</sup> As defined in 21 V.S.A. § 2003

<sup>8</sup> Ibid 7

<sup>9</sup> Only people in the exchange under 400% FPL will be eligible for the federal premium tax credits.

**Attachments**

*Appendix A* – Diagram produced by the Vermont Department of Labor to help employers determine which employees are subject to the Vermont employer assessment as it currently exists.

*Appendix B* – Diagram produced by Henry J. Kaiser Family Foundation showing how penalties will be determined for employers not offering “affordable coverage” as defined under the Affordable Care Act beginning in 2014.

## Appendix A

### How to determine if an employee should be included in the calculation for “Full Time Equivalent” (FTE)

Basic Definitions (see detailed definitions in the Rules and FAQ’s):

**Employee:** An individual providing services to your business; this will be the same individuals currently being reported on your unemployment contributions report, provided they were 18 for the entire quarter.

**“Covered” Employee:** An employee whose hours do NOT need to be included in the FTE health care calculation.

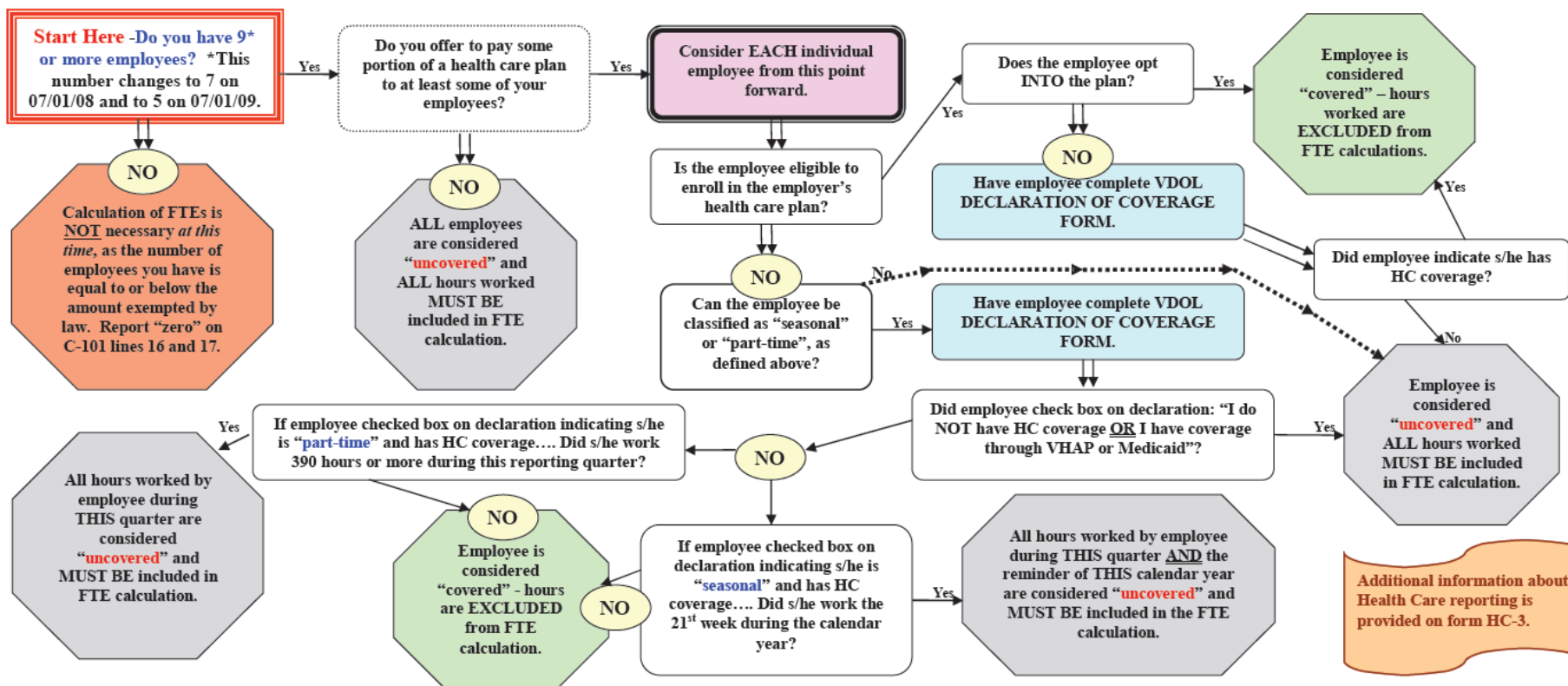
**“Uncovered” Employee:** An employee who is not covered by any plan OR an employee who works for an employer who does not offer to pay a portion of a health plan, OR a “seasonal” or “part-time” employee who has worked weeks (in the case of a seasonal) or hours (in the case of a part-time) in excess of what is allowable to be considered “covered”.

**“Seasonal” or “part-time” employee:** A “seasonal” employee and “part-time” employee **MUST:** 1) work for an employer who offers a health care plan to ALL of its full-time employees, and 2) HAVE health care coverage other than VHAP or Medicaid. Additionally, a “seasonal” employee works 30 or more hours a week, for 20 or fewer weeks, in a job scheduled to last 20 or less weeks during a calendar YEAR; a “part-time” employee works less than an average of 30 hours per week with total hours fewer than 390 during the reporting QUARTER.

**Full Time Equivalent:** The total hours worked by all UNCOVERED employees in the reporting quarter, divided by 520.

**Declaration of Coverage:** An employee signed statement regarding health care coverage status; needed only from employees who are not enrolled in the plan the employer offers to pay some portion of. If no plan is offered by the employer, declarations are moot, as ALL employees would be “uncovered”, regardless of health care coverage from another source.

**Health Care Plan:** Health care coverage plans include: Medicare, Medicaid, VHAP, or private/employer sponsored insurance plan that **INCLUDES** both hospital and physicians services.



Appendix B

## Penalties for Employers Not Offering Affordable Coverage Under the Affordable Care Act Beginning in 2014

