



Written by [Michael Tennant](#) on January 15, 2013

IRS to Employers: There's No Escaping ObamaCare

The Internal Revenue Service (IRS) has fired a shot across the bow of employers hoping to remain free of ObamaCare's employer mandate by adhering to the letter, but not the spirit, of the law. The agency's message: Don't even think about it.

The IRS recently issued a [144-page notice](#) of "proposed regulations providing guidance under section 4980H of the Internal Revenue Code ... with respect to the shared responsibility for employers regarding employee health coverage." That is, the agency is notifying the public that it will be promulgating rules as to how it interprets the employer mandate and how it intends to enforce it.

And as [Merrill Matthews](#) observes at *Forbes*: "Don't you love that 'shared responsibility' reference? It's as if President Obama's campaign speeches have morphed into IRS reg[ulation]s."

The employer mandate requires employers with 50 or more full-time employees to offer "affordable" health insurance coverage to those employees, with "affordable" defined as costing an employee no more than 9.5 percent of his total household income. For every full-time employee who opts out of "unaffordable" employer-sponsored coverage and obtains insurance on a state exchange, often with a taxpayer subsidy, the employer will be fined up to \$2,000.

"The Treasury Department and the IRS are aware of various structures being considered under which employers might use temporary staffing agencies (or other staffing agencies) purporting to be the common law employer to evade application of section 4980H," the IRS notice states.

The IRS anticipates two ways in which employers might try to circumvent the mandate through temporary agencies. First, an employer might hire an employee directly for, say, 20 hours a week, then hire the same person through a temporary agency for another 20 hours per week, thereby getting 40 hours' worth of work out of that individual without either the employer or the agency having to classify him as a full-time employee. Second, an employer might not hire the individual directly at all but might hire him through more than one temporary agency, again obtaining 40 hours' worth of work a week but keeping the individual from being considered a full-time employee of either the employer or any of the temporary agencies.

"The Treasury Department and the IRS anticipate that only in rare circumstances, if ever, would the 'client' under these fact patterns not employ the individual under the standard as a full-time employee," says the IRS. "Rather, the Treasury Department and the IRS believe that the primary purpose of using such an arrangement would be to avoid the application of section 4980H."

Fortunately for Uncle Sam, the IRS is on top of the situation: "It is anticipated that the final regulations will contain an anti-abuse rule to address the situations described" above. Essentially, if an employer





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tries to skirt the law's intent by using one or more temporary agencies to get a full-time employee without having to classify him as such, the IRS will simply declare that the individual is indeed a full-time employee and add him to the employer's count of said employees.

In addition, notes [CNSNews.com](#):

The agency specified that employers could still fall under the mandate if they employ enough part-time workers to equal 50 full-time workers. For example, if an employer has 40 full-time workers and 20 part-time workers, that employer would be considered by the government to have 50 full-time workers and would be subject to the mandate because the 20 part-time workers average to 10 full-time workers — meeting the 50 full-time-worker threshold.

“So Obama rams through a costly, onerous, time-consuming and job-killing health insurance bill, and employers will look for ways to limit or minimize its impact — just as rich liberals do with taxes,” Matthews remarks. “And the IRS expects it, which is why it's putting employers on notice.”

In short, there is no escaping the long arm of what purports to be the law. Never mind that both ObamaCare and the IRS are affronts to liberty and that the former is plainly unconstitutional, no matter what the Supreme Court — which couldn't even decide whether the \$2,000-per-employee punishment is a tax or a penalty — may have declared.

Given that the notice of proposed regulations runs to a gross of pages — and gross they are — one can only imagine how immense the final rules will actually be. And that will be on top of regulations that, as of October, were already “well over twice as long as the Guinness World Record for the longest novel,” according to [Americans for Limited Government](#).

Naturally, enforcing all these new rules will require more bureaucrats. The Treasury Department's inspector general for tax administration says “the IRS will need more than 2,000 employees to monitor compliance with Obama's health care law,” writes Matthews. “And that's just for 2013.”

“Well, Nancy Pelosi claimed when ObamaCare passed that it would create 400,000 new jobs almost immediately,” he adds. “The public probably didn't understand she was talking about IRS agents looking to make sure you accept your shared responsibility.”



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