# States Give New Life To The Individual Mandate

Insights
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The Tax Cuts and Jobs Act (TCJA), passed at the end of 2017, effectively repealed the individual mandate under the Affordable Care Act (ACA) by reducing the tax penalty to zero. Thus, while the ACA still requires individuals to obtain health insurance, there is no tax penalty for ignoring the law. Importantly, however, the penalty was not eliminated until 2019, so individuals could still be assessed taxes under the ACA for failing to maintain coverage through 2018.

Seeking to uphold one of the major foundational pillars of the ACA, some states are enacting their own statewide health care individual mandates. Massachusetts has had its own health coverage mandate since 2006, which continues to remain in effect. But other states, such as New Jersey, have passed their own statewide mandates, while even more states (including California, Connecticut, Maryland, Minnesota, and Washington) are considering implementing their own laws. It is unclear at this point what employer reporting obligations will look like under many of the new state laws.

**Background**

The original purpose of the individual mandate was to motivate individuals – sick and healthy – to obtain health coverage so that the risk associated with insuring sicker individuals could be spread across a more diverse population, resulting in reduced premiums for everyone. Accordingly, once the individual mandate penalty was nullified by the TCJA, states naturally became concerned that healthier individuals would drop health insurance coverage and that the remaining pool of insureds in the marketplace would cause health insurance premiums to rise.

Last year, New Jersey and the District of Columbia joined Massachusetts as the second and third jurisdictions to enact an individual health insurance mandate. Both laws were effective January 1, 2019, and closely parallel the federal individual mandate in terms of the penalty amount and available exemptions. Vermont has also enacted a state-level individual mandate that will be effective in 2020, but details regarding the penalty's operations have not been finalized.

Enforcement of the state individual mandate penalties will certainly subject employers to new reporting obligations at the state or district level. However, up until this point, employers have had very little guidance from state agencies. For example, the District of Columbia and Vermont have not yet released guidance addressing employer reporting requirements or forms. However, New Jersey has finally released information for employers regarding the state's individual mandate reporting, which could offer a glimpse into how other jurisdictions will handle the issue.

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**New Jersey Employer Reporting Requirements**

New Jersey has provided initial guidance for employers on its "NJ Health Insurance Mandate" website. The guidance explains that the state expects employers to use the current IRS ACA reporting Forms 1095-C, 1094-C, 1095-B, and 1094-B for the state-level reporting. If the IRS discontinues or substantially changes the ACA forms, the state has indicated that it will deploy similar forms and require that they be sent to the state and to New Jersey taxpayers. The state has also instructed that employers will file the forms through New Jersey's W-2 filing system.

Coverage information for 2019 must be filed electronically by February 15, 2020. Filing instructions are anticipated sometime in mid-2019. The new guidance does not specify a date for providing reporting forms to employees under the state mandate, but the deadline will likely be on or before February 15, 2020. The reporting requirements apply to employers within the state, as well as out-of-state employers that withhold and remit New Jersey gross income tax for New Jersey residents.

**What This Means For Employers**

Employers with operations in Massachusetts, New Jersey, Vermont, and D.C. should review the individual mandate requirements imposed by their respective jurisdictions and assess whether changes to their administrative practices and procedures are needed. Although we are still awaiting guidance from Vermont and D.C., New Jersey employers should review the state's recent guidance posted to the "NJ Health Insurance Mandate" website and stay tuned for filing instructions later this year.

With the growing popularity of state-level individual mandate laws, all employers should keep an eye on their state agencies and lawmakers and track any proposed or enacted individual mandate legislation. Many of the state-level individual mandate laws are designed to mirror the provisions of the now-nullified federal mandate. However, it's unclear at this point to what extent states will subject employers to varying state reporting requirements. Employers with operations in multiple states should pay particularly close attention and seek guidance from their broker or ERISA counsel to assess opportunities for integrating and streamlining their state reporting obligations.

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