



Healthcare Reform Update: New Regulations for Covered Employers Include Delays to Some Affordable Care Act Rules

Client Advisories

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Employers of all sizes are impacted by the latest regulations issued by the federal government under the Affordable Care Act ("ACA"). These regulations include a delay of the employer mandate for some mid-size employers, some transition relief for larger employers, and some clarification as to which employees are covered by the ACA as "full-time employees."

The most prominent change is that employers with 50 to 99 full-time plus full-time equivalent employees have another year - until 2016 - to comply with the employer mandate (sometimes referred to as the shared responsibility rules) to provide minimum essential coverage for those employees. These "mid-size" employers will be required to report to the IRS on their workers and health coverage for 2015, but will have until 2016 before any penalties for noncompliance could apply. The final regulations provide that employers will have to provide the IRS with a certification of eligibility for this transition relief. Eligibility requirements include maintaining existing coverage during the transition period of 2014 - 2015 and not reducing the workforce or employee work hours in order to fall within the workforce size range. In other words, to be eligible for this one-year reprieve, mid-size employers must certify that they did not take steps to alter their workforce or work hours in order to take advantage of this reprieve.

Larger employers get a different kind of transition relief. Employers with 100 or more full-time plus full-time equivalent employees must comply with the shared responsibility rules, but will be considered compliant in 2015 if appropriate health coverage is offered to a minimum of 70% of full-time employees; this will rise to the ACA's final level of 95% in 2016. It is also important to note that employers with non-calendar year plans generally must comply beginning on the first day of the 2015 plan year, as opposed to January 1, 2015 (which applies to calendar year plans).

Finally with respect to transition relief, the ACA's requirement to offer (but not necessarily pay for) dependent coverage will not apply until an employer's 2016 plan year, so long as: (1) the employer did not offer dependent

coverage during the 2013 or 2014 plan years; and (2) the employer is in the process of arranging to offer dependent coverage in the 2016 plan year.

These and other changes are contained in long-awaited tax regulations that affect all employers subject to the shared responsibility ACA rules. The shared responsibility rules generally provide that a large employer that fails to offer its full-time employees health coverage that is affordable and provides “minimum value” may be penalized if a full-time employee (1) enrolls in a health plan via the new Health Insurance Marketplaces; and (2) receives a premium tax credit. A “large employer” for purposes of these rules generally is an employer that had 50 or more full-time employees, including “full-time equivalents”, during the prior year. A “full-time employee” is one who is employed on average at least 30 hours per week.

The final regulations also provide several clarifications regarding whether individuals in certain occupations may be considered “full-time employees” and whether their hours of service are counted in determining an employer’s “full-time equivalents.” Specifically, the regulations provide new guidance regarding certain employees of institutions of higher education, employers of seasonal employees, and businesses who utilize the services of “bona fide volunteers” such as volunteer firefighters and emergency medical personnel. Despite the clarifications, whether various individuals may be considered “full-time employees,” and an employer’s calculation of its “full-time equivalents,” generally are fact-specific issues; businesses are encouraged to consult qualified legal counsel in this regard.

In addition, the final regulations provide that certain individuals are not employees for ACA purposes. Among others, these individuals include sole proprietors, partners in a partnership, qualified real estate agents, and “direct sellers.”

Notably, the health insurance coverage requirements for individuals have not been delayed. The various types of transition relief referred to above only concern the employer shared responsibility provisions of the ACA.

In announcing their final regulations, which contain numerous other details in addition to the points of interest above, the Treasury Department and the IRS have said that they still will be issuing further guidance regarding employer reporting requirements. If you have questions about how these new rules or the Affordable Care Act employer shared responsibility provisions in general apply to your business, please contact any member of our [Employee Benefits and Executive Compensation Practice Group](#) at (215) 963-3300 or a member of our [Labor and Employment Group](#) in Haddonfield at (856) 795-2121 or in Hackensack at (201) 342-6000.

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