

AUGUST 1, 2013

**HEALTH CARE REFORM FOR EMPLOYERS:
THE ONE-YEAR DELAY IN ENFORCING PPACA'S EMPLOYER MANDATES -
THIS IS NOT THE TIME TO STOP PREPARING**

As many of you have undoubtedly heard, the Obama Administration announced in July that the employer penalties in the Patient Protection and Affordable Care Act ("PPACA") will not be enforced until January 1, 2015.

This delay was announced in a blog post by an Assistant Secretary of the Treasury and was completely unexpected.

Background Reminder - PPACA's Employer Mandates

PPACA requires an "applicable large employer" (i.e., an employer with at least 50 full-time employees) to comply with two separate mandates. They are as follows:

- (1) **Mandate to Make Coverage Available.** First, an "applicable large employer" is required to offer coverage to its "full-time employees" and their dependents. A "full-time employee" for purposes of this mandate generally includes any employee who averages at least 30 hour per week in a given month. If an "applicable large employer" fails to offer coverage to at least 95% of its full-time employees in any given month, the employer is potentially subject to what is commonly called the "sledgehammer penalty."
- (2) **Mandate to Offer Coverage that is "Affordable" and that Provides "Minimum Value."** Second, if an "applicable large employer" does offer coverage to its "full-time employees," that coverage must be "affordable" and it must provide "minimum value." To provide "minimum value" (and at the risk of oversimplifying), the coverage must be expected to pay, in the aggregate, at least 60% of the total allowable cost of the claims that are actuarially expected to be incurred by all of the persons who are covered under the plan. To be "affordable" (and, again, at the risk of oversimplifying), the amount a "full-time employee" is required to pay in order to become covered under the plan cannot exceed 9.5% of the employee's wages from the employer. If an "applicable large employer" fails to offer coverage that is "affordable" and/or fails to offer coverage that provides "minimum value," the employer is potentially subject to what is commonly called the "tack hammer penalty."

In PPACA, Congress provided that both of these mandates were to take effect on January 1, 2014. *Federal regulators, however, have now delayed the enforcement of these two requirements for one year, until January 1, 2015.*

Some Important Thoughts and Takeaways to Consider

The one-year delay was announced in a single paragraph in a Treasury Department blog post. Even a partial list of some of the more important impacts of the one-year delay will take multiple pages.

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For now, though, here are our thoughts on some of the key takeaways from the one-year delay:

- (1) **No Requirement to Offer Coverage in 2014.** You don't have to offer coverage at all to your employees in 2014 if you don't want to do so. You can if you want, but there are no penalties if you don't. Moreover, if you do choose to offer coverage, you don't have to offer it to all of your employees. You can still choose to whom you offer it, just like you do now (but remember that if your plan is self-funded, you will still need to perform and pass nondiscrimination testing, just like you are required to do now).
- (2) **The Rest of PPACA is Still in Effect.** If you do offer coverage in 2014, you need to do it the right way. *There is more to the law than just these two employer mandates, and the rest of the law has not been delayed.* For example, if you do offer coverage in 2014, you will not be permitted to have a waiting period that is longer than 90 calendar days.
- (3) **Beware the PPACA Excise Tax.** If you offer coverage that does not comply with certain PPACA mandates, including requirements that will take effect for the first time in 2014, you will be exposed to a daily excise tax of \$100 *per day per affected individual*. This can obviously add up quickly. The enforcement of the PPACA excise tax has not been postponed.
- (4) **One-Year Delay Does Not Change Your Obligations as an Employer.** The things you will need to do as an employer have not really changed. With the one-year delay, you will have more time to figure out what you need to do. But you may not have as much extra time as you might think.
- (5) **Counting Employees to Determine if an Employer is an "Applicable Large Employer."** For 2014, there was a special transition rule for determining if an employer was an "applicable large employer." Instead of counting its employees during all twelve months of 2013, an employer could elect to count its employees during any six consecutive months in 2013. This rule will not apply for 2015, so, if an employer needs to determine if it is an "applicable large employer" for 2015, it will need to count its employees during all twelve months of 2014.
- (6) **"Applicable Large Employers" with Fiscal Year Plans.** For 2014, there was a special transition rule for "applicable large employers" with fiscal year plans, that is, with plans that begin on a date other than January 1. Under this transition rule, these employers could wait until the first day of their 2014 plan year to comply with the PPACA employer mandates, assuming certain conditions were met. As of now, there will no longer be a transition rule allowing "applicable large employers" with fiscal year plans to wait until the first day of their 2015 plan year to comply with PPACA's employer mandates. This means that these employers will need to comply as of January 1, 2015. To do this, they will either need to offer coverage to all of their "full-time employees" (as defined in PPACA) as of the first day of their 2014 plan year, so that coverage has already been offered as of January 1, 2015, or they will need to allow those full-time employees to enroll at some time in 2014 so that their enrollment takes effect as of January 1, 2015, even if that is in the middle of their plan year.
- (7) **Special Transition Rule for "Standard Measurement Periods."** For 2014, there was also a special transition rule for "standard measurement periods." Under this special rule, an "applicable large employer" could elect for its first "standard measurement period" to be as short as six months, even if the employer had otherwise elected to have both a "standard measurement period" and a "stability period" that were twelve months long. *That transition rule will not apply for 2015.* The key impact of this is as follows:
 - (a) If your first "standard measurement period" will be 12-months long – and that's what we expect most employers to elect – that "standard measurement period" will need to start before the end of 2013 in order to provide time for an "administrative period" before January 1, 2015.

- (b) For example, if you want to have a two-month “administrative period” at the end of 2014, your “standard measurement period” will need to start by November 1, 2013. Many employers may want more time than that, so many employers may want to start their first “standard measurement period” on October 15, 2013.
- (c) *This means that most “applicable large employers” will need to start counting hours before the end of this year.*

It is not an exaggeration to say that PPACA is one of the most complicated laws in our lifetime. When we have sat down with our clients to visit about the changes they will need to make in order to comply with the law, almost all of them have said that they wished they had more time to comply. That wish has been granted.

Don't put things off! We would encourage you to take advantage of the extra time you have been given by moving forward with your PPACA planning and compliance efforts.

If you have any questions regarding the impact of health care reform on employers, please feel free to call Eric Namee, Steven Smith, or Brad Schlozman at (316) 267-2000.

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