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Health Care Reform Play-or-Pay Requirements Partially Delayed, Scaled Back, and Clarified Under New Final Regulations

Overview

Beginning in 2015, the Patient Protection and Affordable Care Act (“Health Care Reform”) generally requires certain large employers to pay a tax penalty for every month in which the employer fails to offer substantially all full-time employees and their dependents adequate health coverage that is affordable and provides minimum value, if a full-time employee enrolls in health coverage through a governmental health insurance exchange (“Exchange”) and qualifies for a premium tax credit or subsidy (“Play-or-Pay penalties.”) New final regulations delay the Play-or-Pay penalties for mid-size employers until 2016, and relax the standard for determining whether “substantially all” full time employees and their dependents are offered coverage for 2015. The new regulations also clarify a number of issues concerning how the Play-or-Pay penalty affects specific groups of individuals.

Which Requirements Are Being Temporarily Relaxed?

Relief for Mid-Size Employers. For 2015, the Play-or-Pay penalties will only generally apply to companies with 100 or more full-time employees and full-time equivalent employees. Employers with between 50 and 100 full-time employees and full-time equivalent employees have to file a certification in order to be exempted from the Play-or-Pay penalties in 2015. Starting in 2016, the Play-or-Pay penalties will apply to employers with 50 or more full-time employees (including full-time equivalent employees). Small employers (less than 50 full-time and full-time equivalent employees) remain exempt from the Play-or-Pay penalties.

Relief for Large Employers. To avoid the Play-or-Pay penalties that apply when an employer fails to offer coverage to substantially all of its full-time employees (generally, employees who work 30 hours per week), during 2015 the employer only has to offer coverage to 70% of its full-time employees. Starting in 2016 this will increase to 95%.

Relief for Employers Newly-Classified as Large. Employers can use a special rule in 2015 to determine if they have become a large employer subject to the Play-or-Pay requirements. Employers can determine whether they had at least 100 full-time or full-time equivalent employees in 2014 by looking at a period of at least six consecutive months, instead of the full year.

Dependent Coverage. The requirement that large employers offer coverage to their full-time employees’ dependents in order to avoid the Play-or-Pay penalties will not apply in 2015 to employers that are taking steps to arrange for such coverage to begin in 2016.

Non-Calendar Year Plans. Employers with plan years that do not start on January 1 can begin compliance with the Play-or-Pay penalty provision at the start of their plan year in 2015 rather than on January 1, 2015, and the conditions for this relief are expanded to include more plan sponsors.

Six-Month Measurement Period. While preparing for 2015 offers of coverage to variable hour employees, plans may use a look-back measurement period of six months during 2014, even if their stability period (the time during which an employee with variable hours must be offered coverage) is longer than 6 months.

What Requirements Have Been Clarified?

Volunteers. Bona fide volunteers of a government or tax-exempt entity, such as volunteer firefighters and emergency responders, will not be considered full-time employees, even if they receive a stipend or reimbursement for their services.

Students. Service performed by students under federal or state-sponsored work-study programs will not be counted in determining whether they are full-time employees.

Seasonal Employees. Employees in positions where the customary annual employment is six months or less generally will not be considered full-time employees.

Educational Employees. Teachers and other educational employees will not be treated as part-time for the year simply because their school is closed or operating on a limited schedule during the summer.

Adjunct Faculty. Until further guidance is issued, employers of adjunct faculty generally must use a method of crediting hours of service that is reasonable under the circumstances and consistent with the Play-or-Pay requirements. Crediting an adjunct faculty member with 2 ¼ hours of service per week for each hour of teaching or classroom time is deemed a reasonable method for this purpose.

Dependents. The definition of the term “dependents” was changed to no longer include foster children and step children. Large employers no longer have to offer coverage for foster children or step children in order to avoid the Play-or-Pay penalties.

Conclusion

The relaxed and partially delayed implementation of the Play-or-Pay penalties is good news for employers, as it allows large employers more time to make sure they have in place the necessary procedures and documentation to avoid penalties. Employers wishing to take advantage of these delays should talk with an ERISA/employee benefits attorney about the steps they need to take in order to avoid unintended consequences associated with changing the scope of their group health plan coverage. We would be happy to work with you as you analyze how the new Health Care Reform regulations will affect you.

If you have any employee benefits questions, please contact your regular Butzel Long attorney, a member of the Butzel Long Employee Benefits Practice Group, or the author of this client alert.

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