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# Affordable Care Act Update: Are You Eligible For A Grace Period Until January 1, 2016?

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On February 12, 2014, the U.S. Department of the Treasury issued final regulations ("Final Rules") for the Shared Responsibility for Employers Regarding Health Coverage component of the Patient Protection and Affordable Care Act ("ACA"). Under the ACA, employers with 50 or more full-time, including full-time equivalent ("FTE"), employees (the total of full-time employees plus FTE employees will be referred to in this article as "Total Employees") may be subject to a penalty tax for:

- Failing to offer minimum essential health coverage to all full-time employees and their dependents; or,
- Offering coverage that fails to meet minimum value and affordability standards.

These provisions are commonly referred to as the "Employer Mandate" and employers subject to the Employer Mandate are defined as "Applicable Large Employers."

In July 2013, the Employer Mandate was delayed one year from its original effective date of January 1, 2014 to January 1, 2015. While Applicable Large Employers with 100 or more Total Employees are still required to comply with the Employer Mandate beginning January 1, 2015, employers with at least 50, but less than 100, Total Employees may be eligible for an additional one-year grace period for compliance until January 1, 2016. The Final Rules refer to this grace period as "transition relief," which is intended to assist employers in the shift to ACA compliance.

In order for an Applicable Large Employer with 50 to 99 Total Employees to take advantage of the transition relief through January 2016, the employer must certify to the Internal Revenue Service that it:

- Employs, on average, at least 50, but less than 100, Total Employees, on business days during 2014;
- Will not reduce its workforce to satisfy the first condition regarding its workforce size; and,
- Will maintain, will not eliminate, and will not materially reduce the previously offered health care coverage to its employees despite being granted transition relief.

If the Applicable Large Employer certifies its compliance with these conditions, it will not be assessed penalties for failing to offer its full-time employees and their dependents health care coverage that meets minimum value and affordability standards. It is important to understand that, under the Employer Mandate, an Applicable Large Employer is only required to offer affordable minimum essential health coverage to full-time employees and their dependents. The ACA defines a full-time employee as one working on average 30 or more hours per week. There is no requirement under the ACA to offer coverage to FTE employees who do

not meet the ACA definition of a full-time employee. The number of FTE employees is only relevant to calculating whether an employer is an Applicable Large Employer and subject to the Employer Mandate.

The transition relief outlined above is not available to Applicable Large Employers with 100 or more Total Employees; however, limited transition relief may be available for these employers for 2015. Prior to the Final Rules, in order to comply with the Employer Mandate, Applicable Large Employers with 100 or more Total Employees were required to offer minimum essential coverage to at least 95% of their full-time employees. Now, they will not be subject to penalties if they provide minimum essential coverage to at least 70% of their full-time employees in each month of 2015. Beginning January 2016, however, the required percentage that must be offered minimum essential coverage will return to 95%.

Other important changes and clarifications in the Final Rules include:

- Hours worked as a "bona fide volunteer" are excluded from the definition of "hours of service" for the purpose of calculating the number of Total Employees to determine an employer's status as an Applicable Large Employer. The Final Rules clarify that volunteer firefighters, emergency medical providers, and the like are bona fide volunteers and, therefore, their hours worked are not counted in calculating the number of Total Employees.
- Only student employees enrolled in a federal work study program (or a state or local government's equivalent) OR students participating in an *unpaid* externship or internship are excluded from the hours of service calculation. All other internships and externships must be counted in calculating hours of service.
- In determining whether adjunct faculty members are full-time employees, employers should use a reasonable method to calculate hours of service. However, until further guidance is issued, employers may rely on the following reasonable method:

    For each hour of class time the adjunct faculty member spends teaching, credit the adjunct with an additional 1¼ hours of service.

  Example: if the adjunct teaches 6 credits per week in a semester, then a reasonable calculation of the adjunct's hours of service per week would be 13½ hours. On the other hand, if the adjunct teaches 15 credits per week in a semester, the adjunct's hours of service would be 33¾ hours, thus making the adjunct a full-time employee.

- The definition of "seasonal employee" was clarified to mean an employee in a position for which the customary annual employment is six months or less.

Not all guidance regarding the Employer Mandate is final. Additional guidance regarding these issues and the reporting requirements for Applicable Large Employers is expected to be released in the coming weeks. Ward and Smith, P.A. will continue to keep you informed and updated on these issues as they develop.

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