

February 14, 2014

Health Care Reform: Final Regulations on Employer Shared Responsibility Provisions – Transitional Relief

On February 10, 2014, the Internal Revenue Service (IRS) and the Treasury Department issued final regulations (Final Regulations) relating to the Employer Shared Responsibility provisions of the Affordable Care Act (ACA). The Employer Shared Responsibility provisions require applicable large employers to provide health care benefits to full-time employees (FTEs) or risk paying substantial penalties. This Client Alert provides a brief overview of the transitional relief under these new Final Regulations.

The Employer Shared Responsibility provisions of the ACA had been originally set to take effect during the 2014 plan year. In July of 2013, the IRS delayed application of these provisions until January 1, 2015. The release of the 227-page Final Regulations has provided employers with additional transition relief for the 2015 plan year.

1. Smaller (50-99 Employees) Employer Transitional Relief

One of the most significant changes under the Final Regulations is the provision of transitional relief for employers who employ at least 50 employees, but fewer than 100 employees. If such smaller employers meet certain requirements, they will not be subject to an Employer Shared Responsibility payment for the 2015 plan year.

An employer will be eligible for this relief if it certifies on a prescribed form that it meets the following conditions:

- Limited Workforce Size – The employer employs, on average, 50 to 99 FTEs (or full-time equivalent employees) on business days during 2014.
- Maintenance of Workforce and Aggregate Hours of Service – An employer has not reduced the size of its workforce through the end of 2014 in order to qualify for this transition relief. However, an employer that reduces its workforce for bona fide business reasons will still qualify for the relief.
- Maintenance of Previously Offered Health Care Coverage – During the period beginning February 9, 2014 and ending on the last day of the 2015 plan year, an employer has not eliminated (or materially reduced) health coverage offered as of

February 9, 2014. The employer must continue to offer coverage during this coverage maintenance period at nearly the same cost-sharing levels through the end of the 2015 plan year to the same classes of employees to whom coverage was offered prior to February 9, 2014. In addition, if benefits are changed, coverage must provide minimum value after the change.

This transition relief may apply to new employers.

2. Non-Calendar Year Plan Transitional Relief

Transitional relief under the Final Regulations provides that employers with non-calendar year plans will generally be subject to the Employer Shared Responsibility provisions effective on the first day of the 2015 plan year, rather than on January 1, 2015. This relief will only apply to employers that maintained non-calendar year plans as of December 27, 2012, and only if such employers had not modified the plan year after such date to delay the start of the plan year. However, employers subject to this transitional relief will remain subject to reporting requirements under Section 6056 for the entire 2015 plan year.

3. Applicable Large Employer Determination Transitional Relief

Under the transitional relief of the Final Regulations, employers may use any consecutive six-month period in 2014 (rather than the full twelve months) to determine if it is an applicable large employer subject to the Employer Shared Responsibility provisions in 2015.

4. Shortened Measurement Period Transitional Relief

For employers who wish to determine the status of variable hour employees with the look-back measurement method, the Final Regulations provide one-time transitional relief, permitting a six-month (or greater) measurement period beginning no later than July 1, 2014 for calculation of the 2015 corresponding stability period. This corresponding stability period may be up to a 12-month period. The measurement period must end no earlier than 90 days before the first day of the 2015 plan year.

5. Employee Coverage Transitional Relief

Prior to the Final Regulations, an applicable large employer would be subject to the 4980H(a) Employer Shared Responsibility penalties (i.e. \$2,000 per FTE minus the first 30 FTEs, if at least one FTE receives subsidized coverage on a health care exchange) unless 95% of its FTEs (and their dependent children to age 26) were offered minimum essential coverage. For the 2015 plan year, an applicable large employer will be subject to the 4980H(a) penalty unless **70%** of FTEs (and their dependent children to age 26) are offered such minimum essential coverage. It should be noted, however, that the employer will still be subject to the 4980H(b) penalties with regard to the employees who

are not offered coverage (\$3,000 per uncovered FTE that receives subsidized coverage on a health care exchange).

The 95% threshold is scheduled to return for plan years on or after January 1, 2016.

6. Dependent Coverage Transitional Relief

An employer that takes steps in its 2015 plan year toward offering dependent coverage will not be subject to an Employer Shared Responsibility penalty solely on account of its failure to provide dependent coverage for that plan year. This transition relief will not apply to the extent that an employer had previously offered dependent coverage in the 2013 or 2014 plan year and then subsequently dropped such offer of coverage.

This provision extends the transitional relief that was previously provided for the 2014 plan year.

In addition, the Final Regulations clarify that for purposes of the Employer Shared Responsibility penalties, both stepchildren and foster children will now be excluded from the definition of dependent.

7. Penalty Calculation Transitional Relief

These Final Regulations also include transitional relief for the calculation of penalties for employers with 100 or more FTEs or full-time equivalent employees who are subject to the 4980H(a) penalty (described in 5 above). For any calendar month in an employer's 2015 plan year, employers may exclude the first 80 employees from the penalty calculation (rather than the first 30).

ADDITIONAL INFORMATION

For more information about any of the matters discussed in this Employee Benefits Client Alert, or about health care reform generally, please contact Shira McKinlay at (303)292-7870, or shira.mckinlay@kutakrock.com. For more information on our Employee Benefits practice and for recent Employee Benefits news and alerts, please visit us at www.kutakrock.com.

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