



# Benefits Alert

## Legal developments affecting employee benefits

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### Employer health care mandate and reporting requirements delayed until 2015

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In a move applauded by employers, on July 2, the Obama Administration delayed implementation of the employer health coverage mandate under the Affordable Care Act by one year. The employer “play-or-pay” mandate, which applies to employers with at least 50 full-time-equivalent employees, will require employers to offer affordable health coverage to employees who perform at least 30 hours of service per week, or pay stiff tax penalties. The employer mandate was previously scheduled to become effective January 1, 2014, and is now deferred until January 1, 2015. (Details about the mandate, its penalties, and how to count full-time employees can be found in our January 16, 2013 alert: *Prompt action required by employers on health care reform: IRS issues “play or pay” regulations*).

The Administration states that this delay is in response to a number of concerns raised by stakeholders, such as complaints about the complexity of the “play-or-pay” regulations issued earlier this year, and the need for more time to implement reporting systems. The Administration says it intends to use the one-year delay to revamp and simplify the insurer and employer reporting requirements, and provide employers time to adapt health coverage and reporting systems to comply with the new mandates. The Treasury Department intends to issue transitional guidance within the next week and to publish proposed rules implementing the new insurer and employer reporting provisions later this summer. The Administration also encouraged employers to implement voluntary information reporting in 2014 in hopes that real-world testing of reporting systems in 2014 will contribute to a smoother transition to full implementation in 2015.

Keep in mind that this limited delay does not affect other provisions of the Affordable Care Act slated to go into effect in or before 2014, such as:

- a 90-day maximum on eligibility waiting periods;
- monetary caps on annual out-of-pocket maximums;

- total elimination of lifetime and annual limits (including expiration of waivers that permitted certain “mini-med” plans and stand-alone Health Reimbursement Arrangements to stay in place through plan years beginning in 2013);
- new wellness plan rules;
- revised Summary of Benefits and Coverage templates;
- Patient Centered Outcomes Research Institute (PCORI) excise taxes and transitional reinsurance program fees;
- a notice informing employees of the availability of the new health insurance Exchanges (a model notice is available on the U. S. Department of Labor website); and
- insurance market reforms.

Moreover, as yet, the delay does not affect the individual mandate which requires most individuals to purchase insurance by January 1, 2014, or pay a tax penalty. Therefore, a significant result of the delay may be to increase the number of employees without coverage at work who will purchase individual coverage through a health insurance Exchange. Open enrollment for the Exchanges is still scheduled to begin October 1, 2013. Under the Exchange provisions, lower-income individuals can qualify for a federal subsidy if their employer does not offer health coverage that meets minimum value requirements and is “affordable” when measured as a percentage of their household income.

### **Employer next steps**

Pending further guidance from the Treasury Department, employers are faced with a number of considerations:

- Employers who were planning to expand coverage to new classes of employees or dependents, or change cost-sharing structures to comply with affordability requirements, can postpone implementation of those changes for up to a year. However, some employers may wish to continue implementation for 2014 even though the mandate will not be enforced until 2015. This could be the case for employers that have already made significant investment of time and effort towards compliance, those who have already communicated intended changes to employees or who wish to expand coverage anyway to obtain the benefit of better employee relations, and/or employers that wish to utilize the new rules as an opportunity to restructure their overall health insurance program.
- Employers who were considering restructuring corporate ownership, employee work schedules, employment policies regarding temporary employees, or implementing other tactics to avoid the new coverage requirements can take another year to evaluate and execute those decisions.

- Employers may wish to voluntarily comply with the new IRS reporting requirements beginning in 2014 in order to start data collection, and to develop and test IT systems before penalties can be imposed for reporting errors.
- Some employers might want to go beyond the mandatory notice requirements, providing additional information and assistance to their uninsured employees regarding enrolling for insurance, and the generous government subsidies available through the Exchanges.
- Finally, employers should continue to develop an implementation timeline, preparing for those requirements that are still scheduled to go into effect in or before 2014, and for full implementation of the employer coverage mandate by 2015.

If you have any questions about the impact of this delay, implementation of your compliance timeline or effective employee communications, please contact a member of our employee benefits team or:

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