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Labor & Employment Alert
February 2014

Obama Administration Delays Implementation of the Affordable Care Act's Employer Mandate Again

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The Affordable Care Act ("ACA") contained an employer mandate, known as the employer responsibility provisions or "pay or play," which was originally scheduled to be effective as of January 1, 2014. Last summer, the Obama Administration announced a delay in that mandate until January 1, 2015. On the heels of last summer's delay, the Administration has decided to further delay the provision's effective date until January 1, 2016, for employers with between 50 and 99 full-time equivalent employees. Employers with 100 or more full-time equivalent employees will only be required to offer compliant insurance to 70% of their full-time employees in 2015 in order to avoid penalties, rather than the 95% required by the ACA. The delay is a response to concerns voiced by employers about the time needed to implement the ACA's requirements.

The mandate to provide coverage to full-time employees working 30 or more hours per week or potentially pay a penalty was originally scheduled to be effective as of January 1, 2014, before it was delayed for all employers until January 1, 2015. Employers who believe they are eligible for this new delay will be required to certify under penalty of perjury that they did not reduce their workforces to qualify for the delay.

The employer mandate provides for penalties of up to $2,000 per full-time employee on employers with more than 50 full-time equivalent employees who either do not offer health coverage or who have full-time employees who receive a premium tax credit. If an employer does not offer minimum essential coverage and one or more full time employees receive a premium tax credit, the penalty is $2,000 per full time employee with the first 30 full time employees excluded. So, an employer with 100 full time employees that does not offer insurance would pay $140,000 (70 x $2,000). A full time employee is one who works 30 or more hours per week.

If an employer offers minimum essential coverage but one or more full time employees receive a premium tax credit, then the penalty is $3,000 per employee who receives the premium credit with the maximum penalty not exceeding $2,000 per full time employee, excluding the first 30 full time employees. Therefore, if an employer with 100 full time employees offers minimum essential coverage but has 5 full time employees receive a credit, then that employer would pay $15,000 (5 x $3,000). The maximum penalty for that employer would be $140,000 (70 x $2,000).

The delay in the employer mandate will not affect employer reporting requirements on the details of their health care plans. Reporting is scheduled to begin in 2016 for 2015 information. As of January 1, 2016, all employers with 50 or more full-time equivalents will be required to follow the ACA's requirement to offer compliant coverage to 95% of their full-time employees or face potential penalties.

While the delayed effective date provides some relief, employers and benefit funds should continue to work on implementing any changes necessary to comply with the law in order to be fully compliant by January 1, 2015, for larger employers, and January 1, 2016, for employers of between 50 and 99 full-time equivalents, so as to avoid potential penalties.

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If you have any questions or concerns with regard to the implementation of the Affordable Care Act, please contact Katherine A. Hesse, Brian P. Fox or the attorney assigned to your account.

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