Legal Alert

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EMPLOYER MANDATE FINAL REGULATIONS

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On February 12, 2014, the Department of the Treasury issued final regulations on the Affordable Care Act's ("ACA") Employer Shared Responsibility requirement ("Employer Mandate"). The final regulations provide a number of clarifications as well as various forms of transition relief which are intended to assist employers in preparing for, and complying with, the Employer Mandate. The following provides a brief synopsis of some of the notable clarifications and forms of transition relief set forth in the final regulations. A complete copy of the final regulations can be found at http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf

Effective Date for Non-Calendar Year Plans

Employers with non-calendar plan years will generally not be required to offer coverage to some or all of their full time employees pursuant to the Employer Mandate until the first day of the plan year beginning after January 1, 2015. In order to be eligible for this transition relief, the employer must have maintained a non-calendar year plan as of December 27, 2012 and the plan year must not have been modified after December 27, 2012.

The Requirement to Offer Coverage

For the 2015 plan year only, a large employer can avoid the penalty under Section 4980H(a) for failing to offer coverage to its full time employees by offering coverage to at least 70% of its full time employees. However, effective with the 2016 plan year, this threshold increases to the originally intended 95%. Moreover, employers will not be penalized for failing to offer

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coverage to dependents during the 2015 plan year provided they take steps to ensure dependent coverage will be offered effective with the 2016 plan year.

Penalty for Failing to Offer Coverage

For 2015 plan year only, a large employer who fails to offer coverage to at least 70% of its full time employees will be penalized $2,000.00 per full time employee, not counting the first 80 full time employees. However, effective with the 2016 plan year, only the first 30 full time employees (as originally intended) will not be counted in calculating the penalty.

Reasonably Expected to Work 30 Hours or More Per Week

The final regulations provide examples of the factors that should be considered in determining whether a new employee is reasonably expected to be full time under the ACA. These include, but are not limited to: (1) whether the employee is replacing an employee who was, or was not, full time; (2) the extent to which employees in comparable positions are, or are not, full time; and (3) whether the job was advertised, otherwise communicated or otherwise documented as requiring 30 hours or more per week.

Initial Measurement Period for New Variable Hour Employees

Employers may use an initial measurement period (between 3 and 12 months in length) to determine whether new variable hour employees are full-time employees who must be offered coverage. The length of the initial measurement period must be the same as the standard measurement period used for similar ongoing employees. The final regulations clarify that the initial measurement period must begin on either: (1) the employee's start date; (2) the first day of the first calendar month following the employee's start date; or (3) the first day of the first payroll period starting on or after the start date (if later).

The final regulations further clarify that while the initial measurement period does not need to start at the beginning of a calendar month, the stability period must start at the beginning of a calendar month. For example, a measurement period could start on March 15, 2014 and run until March 14, 2015.

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However, the Stability period would have to start on April 1, 2015 and run until March 31, 2016, with an Admin period of March 15- March 31.

Shorter Look Back Period for the 2015 Stability Period

Generally, the look-back measurement period must be the same length as the stability period. However, on a one time basis in preparing for compliance with the Employer Mandate for 2015, employers may use a look back measurement period as short as 6 months with respect to a stability period of up to 12 months. In order to take advantage of this transition relief, the measurement period must begin no later than July 1, 2014 (regardless of whether an employer's health insurance plan operates on a non-calendar plan year) and end no earlier than 90 days before the first day of the plan year beginning on or after January 1, 2015 (90 days being the maximum permissible administrative period).

Student Employees

Student employees working in positions subsidized by federal work study programs or substantially similar programs of a state or political subdivision are not considered employees for the purposes of the ACA. However, there is no general exception for student employees. All hours of service for which a student employee is paid or is entitled to be paid (other than in the work study programs discussed above) are required to be counted for the purposes of the Employer Mandate, as with any other employees. This includes paid internships and externships.

Short Term/ Temporary Employees

Short term and temporary employees cannot be treated as new variable hour employees (who can be required to work an initial measurement period before being offered coverage). As such, short term and temporary employees who are reasonably expected to work 30 or more hours a week must be offered health insurance within 3 months of hire.

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Seasonal Employees

Seasonal employees are defined as employees in positions for which the customary annual employment is 6 months or less which begins each calendar year at approximately the same part of the year, such as summer or winter. Seasonal employees, unlike short term/ temporary employees, can be treated as variable hour employees for the purpose of determining whether they are eligible for health insurance coverage under the Employer Mandate.

Volunteers

Hours worked by a bona fide volunteer do not count as hours of service as defined by the Employer Mandate. Bona fide volunteers include any volunteer who is an individual working for a government entity or 501(c) tax exempt organization whose only compensation is in the form of: (1) reimbursement or reasonable allowance for reasonable expenses incurred in the performance of volunteer duties; or (2) reasonable benefits and nominal fees, including length of service awards, which are customarily paid by similar entities in connection with the performance of services by volunteers.