

CLIENT ACTION Bulletin

Employee Benefits

IRS Delays and Phases in ACA's Employer "Pay or Play" Requirements

SUMMARY The IRS has issued a final rule for large employers (50 or more full-time employees) to "pay or play" under the Affordable Care Act (ACA), providing them more time to comply with the ACA's requirement to offer affordable, qualifying healthcare coverage or pay a penalty under certain circumstances. For employers with 50 to 99 employees, the final rule delays the mandate until the 2016 plan year, while for employers with at least 100 employees, the requirement applies on a phased-in basis so that in the 2015 plan year, 70% – rather than 95% – of the workers must be offered coverage. Large employers must meet the 95% threshold in 2016 and later plan years. The final rule provides guidance on the delay and phase in, and also addresses a broad range of related employer "shared responsibility" requirements considered in previous pronouncements (see *Client Action Bulletins 13-1* and *13-2*). In addition, the Treasury Department and the IRS released a *Fact Sheet* and *Questions and Answers* on the ACA's requirement and the final rule.

This *CAB* summarizes the most significant provisions of the final rule that applies to a broad range of employers. It does not cover the final rule's provisions that will be of interest to specific employers, such as guidance on: seasonal employees; bona fide volunteers; adjunct faculty and teachers in educational institutions with academic years and student work-study programs; employees with breaks in service; and airline industry employees.

DISCUSSION Employer Shared Responsibility Requirement in Transition

As enacted, the ACA requires applicable large employers to offer full-time workers (and their dependents) coverage that is affordable and that provides minimum value. A failure to do so subjects the employers to one of two penalties (for not offering minimum-value coverage and for not offering affordable coverage) if any of their employees purchases insurance coverage from an exchange and receives a federal premium tax credit for that coverage. In July 2013, the IRS issued *Notice 2013-45*, announcing that no penalties would apply for the 2014 plan year and thereby delaying compliance with the employer mandate for one year (see *CAB 13-9*).

The final rule further extends the employer shared responsibility compliance date:

- *Employers with 50 to 99 full-time employees or full-time equivalent employees* are exempt from the mandate until the 2016 plan year. These employers, however, must certify that they: employed an average of 50-99 full-time employees in 2014; did not reduce their workforce size or employees' work hours between Feb. 9, 2014, and Dec. 31, 2014, to qualify for the relief; and did not eliminate or materially reduce the health coverage offered as of Feb. 9, 2014. A soon-to-be issued final rule on employer reporting will include the certification as part of the submission to the IRS.
- *Employers with at least 100 full-time employees or full-time equivalent employees* must offer coverage to 70% of their employees in the 2015 plan year (down from 95%) and to 95% in the 2016 plan year. These employers, however, remain subject to the penalties for coverage that is unaffordable or not of minimum value and at least one employee purchases insurance through an exchange and receives a premium tax credit or cost-sharing reduction.

For the 2015 plan year, the final rule permits employers to exclude 80 full-time employees (up from the 30-full-time-employee count) when calculating maximum penalties under the coverage requirements.

Measuring "Full-time" Work

Under the final rule, an employee is considered full time for a calendar month if he or she works an average of 30 hours per week; an employee with 130 hours of service in a calendar month is treated as

having worked at least 30 hours per week. The final rule also provides two ways for employers to determine whether an employee has sufficient hours of service to be considered full time:

- For stability periods starting in 2015, a transition rule applies, allowing employers to adopt a look-back measurement period that: is six to 12 months long; begins no later than July 1, 2014, and ends no earlier than 90 days before the first day of the plan year beginning on or after Jan. 1, 2015. This rule applies even if the employer is using a 12-month stability period. After the 2015 plan year, the look-back period can be between three and 12 months, and the stability period must be equal to the look-back period, or six months, if greater.
- Employers also may identify full-time employees using a monthly measurement method, which looks at hours of service in a calendar month and not an average over a measurement period. The final rule includes an option that permits employers to consider hours of service over four- or five-week periods containing either the first or last day of the month. Under this option, employees working 120 or 150 hours, respectively, are considered full time. The stability period, however, must be based on calendar months.

An employer generally must apply the same measurement method for all employees, but is permitted to do so separately for: each group of employees covered by separate collectively bargained agreements; collectively bargained and non-collectively bargained employees; salaried and hourly employees; and employees with primary places of employment in different states.

Other Provisions

The final rule also provides guidance on:

- *Members of a Controlled Group* – All employees of a controlled group are taken into account in determining whether all of the employers in the controlled group are a large employer.
- *Multiemployer Plan Contributors* – The final rule extends, indefinitely, the proposed rule's relief from penalties for employers contributing to a multiemployer plan if the contributions are made pursuant to a collective bargaining agreement, coverage is offered to full-time employees and their dependents, and coverage is affordable and provides minimum value.
- *Coverage of Dependents* – A dependent is defined as an employee's child who has not attained age 26 and excludes foster children, stepchildren, and children who are not U.S. citizens or nationals unless an exception applies. Employers that did not offer dependent coverage in 2013 or 2014 or that offered coverage only to some dependents need not do so in 2015 but must take steps to offer coverage for 2016. This transition relief is not available for employers that offered dependent coverage in 2013 or 2014 and subsequently dropped or drop the offer of coverage.
- *Part-time Employment* – An employer can determine full-time status of new employees who are reasonably expected to work less than an average of 30 hours per week by using an initial look-back measurement period of three to 12 consecutive months that begins on the employees' start date or up to the first of the month following the employees' start date. An employee is treated as an "ongoing" employee one he or she has worked for at least one complete measurement period.
- *Noncalendar-year Plans* – Employers with noncalendar-year plans need not comply with the shared responsibility requirement until the beginning of the 2015 plan year, when they must offer affordable, minimum value coverage to their full-time employees. For this transition relief, the plan year must not have been modified after Dec. 27, 2012. The final rule also requires that at least one-quarter of all employees had to be enrolled in the plan on any date in the 12 months preceding Feb. 9, 2014, or at least one-third of all employees had to be offered a qualifying plan in the open enrollment period that ended most recently before Feb. 9, 2014. Under this relief, employers remain subject to the information reporting requirements for the entire 2015 calendar year.

ACTION

Employers with 50 or more full-time employees should review the IRS's final rule and consider how to comply with the shared responsibility requirements, both under the transition period and longer term. The final rule also provides important details for employers with specific need for guidance due to the type of workforces employed. Appropriate administrative systems will be necessary to track employees' work hours and health plan coverage elections, as well as plan affordability and minimum value.

For additional information about the IRS's final rule, please contact your Milliman consultant.