

Health Care Reform Management Alert Series



Delay for Automatic Enrollments and Helpful Guidance on Play or Pay Penalty

Issue 34

This is the thirty-fourth issue in our health care reform series of alerts for employers on selected topics in health care reform. (Our general summary of health care reform and other issues in this series can be accessed by clicking [here](#).) This series of Health Care Reform Management Alerts is designed to provide a more in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

Issue 20 of our Health Care Reform Management Alert Series addressed Notice 2011-36 whereby the Internal Revenue Service requested comments on several provisions of the Patient Protection and Affordable Care Act (PPACA) designed to expand access to health coverage, including (1) the penalties for failure to offer affordable coverage (the “Play or Pay Penalty”), (2) the prohibition of waiting periods in excess of 90-days, and (3) the requirement that large employers automatically enroll full-time employees for health coverage. On February 9, 2012, the Departments of Labor, Health and Human Services and the Treasury (Departments) issued additional guidance in the form of Frequently Asked Questions (FAQs) to respond to inquiries the Departments have received and to identify approaches that the Departments are considering proposing.

Play or Pay Penalty

Background. Starting in 2014, employers with 50 or more full-time equivalent employees may be subject to a penalty if any full-time employee is certified to receive an applicable premium tax credit or cost-sharing reduction payment. Generally, this may occur where either:

1. The employer does not offer full-time employees the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan; or
2. The employer offers its full-time employees the opportunity to enroll in MEC that either is unaffordable or does not provide minimum value.

Current Employees. The IRS has previously indicated that a “full-time” employee will be defined as one who works an average of 30 hours per week or 130 hours per month. (See *Issue 20* for more details.) For purposes of determining whether an employee (other than a newly-hired employee) is a full-time employee, the FAQs indicate that future regulations will allow employers to use a look-back and stability period not exceeding 12 months. In other words, if an employee is determined to be a full-time employee during a look-back period of up to 12 months, he or she would be treated as a full-time employee for a subsequent stability period of up to 12 months.

New Hires. For purposes of determining whether a newly-hired employee is a full-time employee, the FAQs indicate that future regulations will provide that, in certain circumstances, employers will have 6 months to determine whether a new hire is a full-time employee.

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- If a newly-hired employee is reasonably expected to work full-time on an annual basis and does work full-time during the first 3 months of employment, the employee must be offered coverage as of the end of that period. The FAQs specifically provide that an employer will not be penalized for failing to offer coverage during the first 3 months following an employee's date of hire.
- If it cannot reasonably be determined that a new hire will work full-time, the following rules will apply:
 1. If the employee works full-time during the first 3 months of employment and the employee is expected to work a similar number of hours on an annual basis, the employee will first be considered a full-time employee as of the end of the first 3 month period.
 2. If the employee works full-time during the first 3 months of employment, but the employee is not expected to continue to work a similar number of hours on an annual basis, the plan is permitted an additional 3 month period to determine the employee's status. No penalty will apply with respect to that employee during the first or second 3 month period.

90-Day Waiting Period

Starting in 2014, employers are prohibited from imposing a waiting period for health coverage that exceeds 90 days. The FAQs state that the Departments do not intend to require employers to offer coverage to any particular employee or class of employees, including part-time employees. If an employee is eligible for coverage, however, an employer may not require the eligible employee to wait more than 90 days before coverage is effective.

Automatic Enrollment

PPACA requires employers with 200 or more full-time employees to automatically enroll all new full-time employees in health coverage and to continue the enrollment of current employees. Employees must receive adequate notice and the opportunity to opt-out of any coverage in which the employee was automatically enrolled.

The FAQs provide that the Department of Labor's automatic enrollment guidance "will not be ready to take effect by 2014," and until final regulations are issued, employers are not required to comply.

Employer Comment Requested

Comments on these FAQs (which may be submitted anonymously) are requested by April 9, 2012.

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