



What Employers Need to Know Right Now About Health Care Reform

EMPLOYER SHARED RESPONSIBILITY (PLAY OR PAY) REQUIREMENTS DELAYED TO 2015

July 10, 2013

On July 9, 2013 the Internal Revenue Service issued Notice 2013-45, which confirms that the employer shared responsibility penalties and reporting requirements will not apply until 2015. Last week the Department of the Treasury and the White House blogged that this announcement was coming. The IRS Notice states that employers and insurers will not be required to provide reporting of coverage offered to, and elected by, employees for 2014. The Notice states that the employer shared responsibility penalties are also delayed to 2015. As you may recall, these penalties are set at \$2,000 per full-time employee for failing to offer minimum essential coverage to 95% of full-time employees, or \$3,000 for any full-time employee who receives a premium tax credit/subsidy because the employer did not offer affordable, minimum value coverage and the employee met income and other requirements.

The Notice states that the delay in the employer shared responsibility will not affect the employee's ability to receive a premium tax credit/subsidy. It is currently unclear how the exchange will know if an employee who is applying for a premium tax credit/subsidy is eligible for employer-provided affordable, minimum value coverage. The Notice also says that the delay in the employer shared responsibility requirements will not affect the requirement that an individual obtain minimum essential coverage or pay a penalty. While the employee's obligation to obtain minimum essential coverage remains, in late June the IRS released Notice 2013-42, which provides that if an individual has access to employer-provided coverage and the employer's plan operates on a non-calendar year, the individual will not be subject to the penalty until the start of the employer's plan year.

Unfortunately, the Notice provides few additional details about how this extension will work. For instance, it is unclear whether the play or pay requirements will apply to all plans as of Jan. 1, 2015, or if non-calendar year plans that meet certain requirements will be able to delay compliance until the start of their 2015 plan year.

What The Delay Affects

The play or pay provision requires employers with 50 or more employees to do the following to avoid penalties:

- 1) Determine whether it employs 50 or more full-time or full-time equivalent employees
- 2) Consider employees who average 30 or more hours per week full-time for purposes of their health plan
- 3) Count employees' hours to determine whether they average 30 or more hours work per week
- 4) Offer minimum essential coverage to 95% of full-time employees
- 5) Offer minimum value (60%) coverage to full-time employees
- 6) Offer affordable (less than 9.5% of employee safe harbor income) coverage to full-time employees

Because of the delay, employers will not need to meet the requirements listed above for 2014.

What's Still Required

The delay in the play or pay requirement does not affect the insurance market reforms. This means that these requirements are still scheduled to go into effect as of the start of the 2014 plan year (with penalties of up to \$100 per person per day for non-compliance). These requirements apply to all plans except as noted:

- 1) Waiting periods cannot be more than 90 days from the date the employee becomes eligible
- 2) All pre-existing condition limitations must be removed
- 3) The out-of-pocket maximum cannot exceed \$6,350 for individual and \$12,700 for family coverage for non-grandfathered plans
- 4) Essential health benefits may not have annual dollar limits
- 5) Grandfathered plans must cover dependent children to age 26 even if the child has access to his/her own employer-provided coverage
- 6) New wellness program requirements will apply
- 7) For non-grandfathered small insured plans, whether in or outside the exchange/marketplace, coverage must include the essential health benefits, at the bronze, silver, gold or platinum level, with a deductible in most situations of not more than \$2,000 for individual and \$4,000 for family coverage
- 8) For small insured plans, whether in or outside the exchange/marketplace, modified community rating (rating classes are limited to age, tobacco use, family size and geographic area), guaranteed issue and guaranteed renewal (with some limitations) will apply

Employers also must meet these PPACA requirements:

- 1) Reporting and payment of the PCORI fee by July 31, 2013 for plans that ended Oct. 1, 2012 through Dec. 31, 2012
- 2) Timely distribution of any MLR rebates the plan may receive
- 3) Providing a Summary of Benefits and Coverage (SBC) as part of open enrollment (it is currently unclear whether employers will still need to report whether the plan provides minimum value or minimum essential coverage)
- 4) Distributing the DOL notice regarding the exchange by Oct. 1, 2013 (it is currently unclear whether the content of the notice will be changed because of the delayed application of affordability and minimum value requirements)
- 5) Reporting health care costs on the employee's W-2 (the exemption for employers that issued fewer than 250 W-2s in the prior year or that contribute to a multiple employer plan will continue for the 2013 W-2)
- 6) Paying the transitional reinsurance fee, due in January 2015

What's Next

The government stated in the Notice that it is working to simplify various requirements, and expects to issue the reporting regulations later this summer. (The IRS often uses the meteorological definition of summer, which means that many expect these regulations to be released in September.) Final play or pay rules are expected late this year. Employers should be on the lookout for these rules, and other interim guidance that will help explain how the delay will operate. If employers can delay taking action until the reporting regulations are released, they may avoid rework.

While most employers will enjoy the respite from measurement and stability periods, they may want to take this opportunity to think through actions they had planned to make with respect to their plans to manage the play or pay requirements. Also, many parts of PPACA are unaffected by this delay, and employers will need to meet a number of requirements in 2014 despite this delay. We will provide additional details as they become available

NOTICE 2013-42 is here: <http://wn.ubabenefits.com/Download.aspx?ResourceID=10512>

NOTICE 2013-45 is here: <http://wn.ubabenefits.com/Download.aspx?ResourceID=10513>

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