

**EMPLOYEE BENEFITS****OBAMA ADMINISTRATION DELAYS UNTIL 2015 LARGE EMPLOYER SHARED RESPONSIBILITY REQUIREMENTS, REPORTING AND TAX PENALTIES**

by Jordan Schreier

On July 2, 2013, the Department of Treasury announced a one-year delay in the employer shared responsibility mandate under the Affordable Care Act ("ACA") and related information reporting.

**Complexity Leads to Delayed Reporting Implementation**

The Department said that over the past several months, the Administration engaged in dialogue with businesses about the new employer and insurer reporting requirements under ACA. It took into account employer concerns about the complexity of the requirements and their need for more time to implement them effectively. Based on this, the Administration announced that it will provide an additional year, to January 1, 2015, before the ACA mandatory employer and insurer reporting requirements begin. It said the delay is designed to meet two goals. First, it will allow the Department to consider ways to simplify the new reporting requirements consistent with the law. Second, it will provide time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees. The Department said that within the next week, it will publish formal guidance describing the transition. In doing so, it said it is working hard to adapt and be flexible about reporting requirements as it implements the law.

More specifically, the Department said that the ACA includes information reporting (under Code Section 6055) by insurers, self-insured employers, and other parties that provide health coverage. It also requires information reporting (under Code Section 6056) by certain employers with respect to the health coverage offered to their full-time employees. The Department expects to publish proposed rules implementing these provisions this summer, after a dialogue with stakeholders - including responsible employers that already provide their full-time work force with coverage that exceeds the minimum employer shared responsibility requirements - in an effort to minimize the reporting, consistent with effective implementation of the law.

Once these rules have been issued, the Administration will work with employers, insurers, and other reporting entities to strongly encourage them to voluntarily implement this information reporting in 2014, in preparation for the full application of the provisions in 2015. It said that real-world testing of reporting systems in 2014 will contribute to a smoother transition to full implementation in 2015.

**Delayed Implementation of Shared Responsibility and Tax Penalties**

The Department said it recognizes that this transition relief will make it impractical to determine which applicable large employers owe the shared responsibility tax payment for not providing minimum essential coverage that is affordable and provides minimum value (under Code Section 4980H) for 2014. Accordingly, the Department

is extending transition relief on the employer shared responsibility payments. Under the transition relief, applicable large employers will not owe either the \$2,000 tax or the \$3,000 tax for 2014. Any employer shared responsibility tax payments will not apply until 2015. During the 2014 transition period, the Department strongly encourages employers to maintain or expand the health coverage they provide to their employees.

Importantly, the Department said its actions do not affect employees' access to the premium tax credits available under the ACA, although without employers reporting on who they provide coverage to, it is hard to see how the government will know which individuals qualify for a tax credit. Without more, this suggests that the Department intends that marketplaces for individuals will still be available January 1, 2014. It also suggests that most Americans will still have to obtain health benefits coverage or pay the individual tax. It is not clear if the notice employers are required to send to all employees by October 1, 2013 advising them of the marketplaces will still be required. The upcoming guidance should address this and other requirements. The Department also said that this delay does not change the compliance requirements under any other provision of the ACA. This suggests that the PCORI fee payable by July 31, 2013 is still due, the 90-day maximum waiting period for benefits eligibility in 2014 still applies, etc.

Hopefully, the upcoming guidance will provide more detail on on-going employer responsibilities. Until then, it appears that, presuming there are no additional delays or relief:

- Employers will not have to count full time employees and full-time equivalents in 2013 to determine if they are applicable large employers beginning January 1, 2014.
- Applicable large employers will not have to determine their full-time employees for purposes of providing minimum essential coverage in 2014.
- Applicable large employers who do not provide minimum essential coverage to all full-time employees in 2014 will not owe the \$2,000 tax times all full-time employees (minus 30) if one full-time employee purchases coverage through a marketplace and obtains a tax credit or subsidy.
- Applicable large employers that provide minimum essential coverage that is not affordable or does not provide minimum value in 2014 will not owe the \$3,000 tax times all full-time employees who purchase coverage through a marketplace and receive a tax credit or subsidy.
- Employers will not have to report to the government on their full-time employees and health plan coverage in 2014, although the government will urge voluntary reporting.
- Employers that have been considering adjusting the structure of their workforces to minimize the number of their full-time employees appear to have additional time in which to analyze and implement workforce changes.

Dickinson Wright's employee benefits practice team will continue to follow developments in this area. In the meantime, we are available to assist businesses as they analyze how to structure their health plans for 2014 in light of the Department's announcement and the aspects of ACA with which they must still comply in 2014. Please contact the author of this Alert, any member of the employee benefits practice team or your regular Dickinson Wright attorney for guidance.

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