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Compliance Alert

Employer Shared Responsibility Rules Delayed until 2015
Release Date: July 2013

In what is easily the most significant health reform development for employers since the passage of the Affordable Care Act (ACA), the employer shared responsibility rules (often called the "employer mandate" or "pay or play rules") have been delayed until 2015.

On July 2nd the Treasury Department announced that it is delaying employer reporting requirements, and more importantly, also delaying the requirement that "applicable large employers" must provide coverage to all full time employees or pay a penalty.

Because of the delay:

- Employers can continue existing employee health plan eligibility and coverage rules through 2014 plan years without the risk of paying a penalty under the ACA 4980(H) shared responsibility rules.
- Employers will not be required to provide health insurance coverage to employees with 30 hours of service per week.
- There will be no need for large employers to consider implementing a measurement and stability approach to defining full time employees in 2014.

Importantly, the announcement does not affect other significant areas of the ACA:

- State and federal exchanges will still begin offering coverage to individuals and small employers beginning in 2014.
- Small group underwriting and rating rules will go into effect for plan year beginning in 2014
- The individual mandate that requires most individuals to carry health insurance in 2014 or pay a tax will still apply.
- Subsidies will still be available to certain eligible individuals who purchase individual health insurance policies through public exchanges.
- Other health plan requirements such as the 90 day maximum waiting period, cost sharing limits and child coverage to age 26 are not affected by this delay.

One significant question remains…when will the fully insured non-discrimination rules take effect? The ACA requires the IRS to develop non-discrimination rules for fully insured plans that will be similar to the existing 105(h) rules currently applicable to self-funded health plans. It was widely expected that the ACA non-discrimination rules would go into effect in conjunction with the employer shared responsibility rules in 2014. With this delay will the IRS also delay the effective date of the non-discrimination rules? Hopefully the IRS will answer this question very soon

The Treasury Department also stated that it expects to release more formal guidance regarding the delay very shortly. We will continue to monitor this important development and will release more details as additional information is released.

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