



Final PPACA “Pay or Play” Regulations Temporarily Ease Compliance With Employer Mandates

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On Tuesday, the U.S. Treasury Department released final regulations regarding Obamacare’s “pay or play” mandate. These regulations contain several pieces of transitional relief. Perhaps most notably, the regulations temporarily ease the requirement that employers with 100 or more employees (“large employers”) offer minimum essential coverage to 95% of their full-time employees or face a penalty. In 2015, large employers need only offer coverage to 70% of their full-time employees to avoid a penalty. In 2016, the coverage mandate for large employers reverts back to 95%. (Note that employer coverage must still meet minimum value and affordability requirements in 2015.)

This relief will provide more breathing room for employers of variable-hour employees, and will also be helpful to employers who do not currently offer health coverage to certain employees working 30 or more hours per week. Before this relief was issued, employers would have had to make sure that they were not failing to offer coverage to more than 5% of their full-time employees in 2015. This would require employers to carefully measure variable-hour employees’ hours, and to offer coverage to virtually all employees working 30 or more hours per week. Now, employers have until 2016 to comply with these thresholds. Of course, if an employer fails to offer coverage to more than 30% of its full-time employees, the employer will still have a problem in 2015.

In addition, the regulations provide that an employer need not offer coverage to its full-time employees’ dependents in 2015, provided that: (i) the relief is not available to the extent that the employer offered dependent coverage during the 2013 and/or 2014 plan years; (ii) if coverage was offered to some but not all dependents, the relief applies only with respect to dependents who were without an offer of coverage from the employer in both the 2013 and 2014 plan years; and (iii) the relief is available only if the employer takes steps during the 2014 and/or 2015 plan years to extend coverage under the plan to dependents who were not offered coverage during the 2013 and/or 2014 plan years.

Other transitional relief contained in the regulations include:

- For employers with between 50 and 99 employees, the employer mandate is delayed until 2016. Note that an employer must provide a certification to take advantage of this relief.
- Employees in positions for which the customary annual employment is six months or less generally will be considered seasonal employees and not full-time employees.

- When employers are first subject to the employer mandate, they can determine whether they had at least 100 full-time employees in the previous year by referencing a period of six consecutive months, rather than an entire year.
- For purposes of determining coverage in 2015 only, employers may use a measurement period (the period used to determine whether a variable-hour employee is a full-time employee) of six months, with respect to a stability period (the period following the measurement period, during which the variable-hour employee must be offered coverage) of up to 12 months.
- Employers with non-calendar year plans must comply with the employer mandate at the start of their 2015 plan year, rather than on January 1, 2015.

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