

HEALTH CARE
REFORM

2015 Employer Mandate

For Employers with 100 or More Employees and Non-calendar-year Plans

On Feb. 10, 2014, the Internal Revenue Service (IRS) issued final regulations on the employer mandate, the requirement that applicable large employers (those with 50 or more full-time employees and full-time equivalents (FTEs)) offer coverage to all full-time employees (those working 30 hours or more per week) and their dependents, or risk paying a penalty. Originally effective on Jan. 1, 2014, the IRS previously announced a one-year delay to Jan. 1, 2015.

While the final regulations announced an additional one-year delay for employers with 50–99 employees, Jan. 1, 2015, remains the effective date for employers with 100 or more FTEs (100+ employers). That said, the final regulations provide relief from several compliance obligations for 2015. In addition, the regulations provide for an additional delay for certain 100+ employers that sponsor non-calendar-year plans (those that begin in 2014 and continue into 2015). To be clear, though, for 100+ employers with calendar-year plans or non-calendar-year plans of any size that do not meet the below requirements, the employer mandate is effective Jan. 1, 2015. First, though, an employer must determine if it is a 100+ employer.

Counting FTEs to Determine Status as 100+ Employer

Generally, employers will look to the entire previous calendar year (i.e., 2014) in counting FTEs to determine whether they are considered a 100+ employer for the next year (i.e., 2015). However, in determining status as a 100+ employer for 2015, employers may choose any consecutive six-month period in 2014. An FTE is either a full-time employee (one working 30 hours or more per week) or an equivalent (e.g., total monthly non-full-time employee hours of service divided by 120).

For purposes of counting, employers that are part of a controlled or affiliated services group (as defined in Internal Revenue Code Section 414) must include all controlled group members' employees in the count. For example, a parent and a wholly owned subsidiary would include the employees of both the parent and the subsidiary in determining if they are a 100+ employer. (Employers with ownership interests in other entities should review those rules with outside tax counsel.) Also, if for 120 days or less an employer exceeds the 100+ FTE threshold due to the employment of seasonal workers, the employer will not be considered a 100+ employer.

Relief from Several Obligations in 2015

For the 2015 plan year only, employers must offer coverage to at least 70 percent (normally 95 percent) of all full-time employees and their dependents in order to avoid the employer mandate's larger penalty (Penalty A, an annual penalty of \$2,000 times the total number of full-time employees minus 30). Also only for the 2015 plan year, the 30-employee reduction is replaced by an 80-employee reduction (to reflect the difference in the 2015 employer mandate application toward 100+ employers instead of 50+ employers). Finally, for employers that in 2013 or 2014 limited or did not offer dependent coverage, the requirement to offer coverage to full-time employees' dependents will not apply in 2015, so long as the employer is taking steps to offer such coverage.

Additional Delay for Certain Non-calendar-year Plans

For employers of any size that sponsor non-calendar-year plans, there is transitional relief that delays the employer mandate's effective date until the first day of the 2015 plan year. To qualify for that relief, the employer must meet two preconditions. If they fail to do so, the employer must comply with the mandate on Jan. 1, 2015 (which may require mid-2014-plan-year adjustments).

Precondition #1: Maintenance of Non-calendar-year Plan

On the first precondition, the employer must have maintained a non-calendar-year plan on Dec. 27, 2012, and must not have made modifications to the plan year thereafter (i.e., change to a plan year with a later calendar date). Therefore, employers that modified their plan year (for example, to avoid application of the employer mandate) will not be eligible for an additional delay and must plan to comply with the employer mandate on Jan. 1, 2015.

Precondition #2: Offer of Affordable, Minimum Value Coverage in 2015

On the second precondition, the employer must offer affordable, minimum value (MV) coverage on the first day of the 2015 plan year. "Affordable" generally means that an employee's cost of single-only coverage does not exceed 9.5 percent of that employee's Form W-2 wages for the year (although there are other methods for determining affordability). MV means the plan covers at least 60 percent of the total allowed cost of claims and benefits incurred under the plan. Most plans in the large group market satisfy the MV standard, although actuarial assistance may be necessary for an exact determination.

If the employer meets the two preconditions, the employer is eligible for two types of relief: One for a portion of full-time employees and one for all full-time employees.

Type #1: Relief for a Portion of Full-time Employees

Under the first type of relief, the employer must look at the plan's eligibility terms in effect on Feb. 9, 2014. If the employee is eligible under those terms (even if hired after Feb. 9, 2014), then the employer will not be liable for an employer mandate penalty for that employee for the months prior to the first month of the plan year beginning in 2015. Thus, the relief is applicable only to the portion of full-time employees (whenever hired) that are eligible under the plan terms in effect on Feb. 9, 2014. This relief applies regardless of whether the plan in place on Feb. 9, 2014, is affordable or provides MV.

Type #2: Relief for All Full-time Employees

Under the second type of relief, the employer must meet one of two requirements:

- 1) During the most recent open enrollment prior to Feb. 9, 2014, the employer offered coverage to at least 33 percent of all employees (or 50 percent of all full-time employees); or
- 2) On any day between Feb. 10, 2013, and Feb. 9, 2014, the plan actually covered at least 25 percent of all employees (or 33 percent of all full-time employees).

If the employer meets one of those two requirements, then the employer will not be liable for an employer mandate penalty for all full-time employees for the months prior to the first month of the 2015 plan year.

Summary

For 100+ employers, the employer mandate is effective Jan. 1, 2015. The final regulations relax some compliance obligations in 2015, though, including the requirement to offer coverage to only 70 percent of all full-time employees (instead of 95 percent). For employers of all sizes that sponsor non-calendar-year plans, there may be an additional delay that would apply to either a portion or all of its full-time employees, depending on whether certain requirements are satisfied.

Importantly, for 100+ employers, there is no transition relief for non-calendar-year plans that begin in 2015 and continue into 2016. Such employers should plan to comply (by offering affordable, MV coverage to at least 70 percent of their full-time employees and their dependents) for the first plan year beginning after Jan. 1, 2015.

Employers should work closely with their advisors in determining the applicable effective date of the employer mandate and planning for its required compliance obligations.

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