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February 1, 2013

Play or Pay

On December 28, 2012, the IRS released proposed regulations along with question and answers on the core portions of the Play or Pay rules to take effect in 2014.

BACKGROUND

Applicable Large Employers—This is the term the law uses to refer to employers subject to the Play or Pay mandate. Beginning in 2014, the "Patient Protection and Affordable Care Act" (PPACA) imposes financial penalties on applicable large employers (50 or more full-time employees) that do not offer health insurance coverage, as well as financial penalties for offering coverage that is considered "unaffordable". IRS refers to these penalties as the employer shared responsibility provision under §4980H. Applicable large employers are potentially subject to one of two penalties.

NO OFFER TO ALL FULL-TIME EMPLOYEE PENALTY

Section 4980H(a) Penalty

Employers with 50 or more full-time employees (or full-time equivalents) on business days during the preceding calendar year are liable for a penalty tax if the employer fails to offer all full-time employees (and their child dependents) the opportunity to enroll in an employer-sponsored plan AND any full-time employee is certified to receive an advance premium tax credit or cost-sharing reduction. The determination of employers with 50 or more full-time employees is based on a controlled group.

The penalty is calculated on a monthly basis by multiplying 1/12 of $2,000 by the number of full-time employees less 30. Only one 30-employee reduction per controlled group of employers is allowed. After 2014, the $2,000 amount will be adjusted for inflation. Below this penalty is expressed as a simple mathematical equation.

No Offer to All Full-Time Employee Penalty =

$2,000 annually X (the number of full-time employees—30)

Note: No level of employer contribution is required to avoid the 4980H(a) penalty. Employers are not subject to the No Offer penalty for failing to offer coverage to the employee for the initial three calendar months of employment.

UNAFFORDABLE COVERAGE PENALTY

Section 4980H(b) Penalty

If an employer with 50 or more full-time employees (or full-time equivalents) on business days during the preceding calendar year offers minimum essential coverage, but the coverage is not affordable or does not provide minimum value,

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Unaffordable Coverage Penalty cont.

the employer must pay an excise tax equal to 1/12 of $3,000 per month times the number of it's full-time employees who receive a premium tax credit or cost-sharing reduction. This excise tax is capped so that it does not exceed the section 4980H(a) liability that would have applied if the employer did not offer coverage. Below this penalty is expressed as a simple mathematical equation.

Unaffordable Coverage Penalty = the lesser of:

$3,000 annually X (the number of full-time employees receiving advance premium tax credits);

Or

$2,000 annually X (the number of full-time employees—30)

WHAT DOES UNAFFORDABLE MEAN?

Coverage is unaffordable if the employee's required contribution to the premium cost for single coverage for the employer's lowest cost plan exceeds 9.5% of the employee's household income for the taxable year or, the employer-sponsored plan does not provide minimum value.

IRS PROPOSED REGULATIONS

NO OFFER TO ALL FULL-TIME EMPLOYEE PENALTY CLARIFICATION

The new IRS proposed regulations clarify that coverage must be offered to child dependents to avoid the No Offer Penalty (§4980H(a)). An offer of coverage to an employee's spouse is not required to avoid the penalty. According to the preamble, §4980H(a) and (b) do not contain a statutory definition of the term dependents. The proposed regulations define an employee's dependents as an employee's child (as defined in section 153(f)(1)) who is under 26 years of age. A child attains age 26 on the 26th anniversary of the date the child was born. Employers may rely on employee's representations concerning the identity and ages of the employee's children. The term dependents does not include any individual other than children.

UNAFFORDABLE COVERAGE PENALTY CLARIFICATION

The new IRS proposed regulations clarify that plan affordability for employer penalty purposes is tied to employee-only coverage. Employers will not be penalized for failing to offer affordable dependent coverage.

For the unaffordable coverage penalty (section 4980H(b)), liability is contingent on whether the employer offers minimum essential coverage under an eligible employer-sponsored plan, and whether that coverage is affordable and provides minimum value with respect to employee-only coverage.

Unresolved: This proposed regulation does not address whether the dependents will be eligible for premium tax credits if employer-sponsored coverage is available, but it is unaffordable. This is significant policy decision that is still undecided.

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IRS Proposed Regulations cont.

What we do know is that an employer will not be penalized if a dependent receives a premium tax credit through an Exchange. An employer may be liable for a penalty only if one or more full-time employees are certified to the employer as having received a premium tax credit or cost-sharing reduction.

TRANSITION RELIEF

Transition Relief for Fiscal Year Plans—Generally, any fiscal year plan that exists as of December 27, 2012 will not need to comply with the Play or Pay rules until the first day of the fiscal plan year in 2014.

If an applicable large employer maintains a fiscal year plan as of December 27, 2012, the relief applies with respect to employees (whenever hired) who would be eligible for coverage, as of the first day of the first fiscal year of that plan that begins in 2014 (the 2014 plan year) under the eligibility terms of the plan as in effect on December 27, 2012. If an employee described in the preceding sentence is offered affordable, minimum value coverage no later than the first day of the 2014 plan year, no section 4980H penalty will be due with respect to that employee for the period prior to the first day of the 2014 plan year.

IRS noted that this transition relief was needed because in order to use the look-back measurement method to determine employees' status as full-time employees for the 2013 plan year ending in 2014, employers with fiscal year plans would be required to determine the employees' hours of service for periods before the publication of these proposed regulations.

Employers using this transition relief will still be subject to the reporting requirements under section 6056 for the entire 2014 calendar year. According the preamble, this reporting is essential to the administration for the premium tax credit and therefore applicable large employers will be required to report this information for the entire 2014 calendar year, even if during some calendar months in 2014 no penalties will apply due to the transition rules for fiscal plan years.

Transitional Relief of Cafeteria Plans—Transitional relief is offered for cafeteria plans to permit individuals to change their salary reduction elections for health coverage with fiscal year beginning in 2013 without regard to a "change in status" event.

Transition Relief: Measurement Periods for Stability Periods Starting in 2014—Employers that intend to utilize the look-back measurement method for determining full-time status for 2014 will need to begin their measurement periods in 2013 to have corresponding stability periods for 2014. According to the preamble, the Treasury Department and the IRS recognize, however, that employers intending to adopt a 12-month measurement period, and in turn a 12-month stability period, will face time constraints in doing so.

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Transition Relief cont.

Therefore, solely for purposes of stability periods beginning in 2014, employers may adopt a transition measurement period that is shorter than 12 months but that is no less than 6 months and that begins no later than July 1, 2013 and ends no earlier than 90-days before the first day of the plan year beginning on or after January 1, 2014.

For example, an employer with a calendar year plan could use a measurement period from April 15, 2013 through October 14, 2013 (six months), followed by an administrative period ending on December 31, 2013.

Transition Relief for Applicable Large Employers Participating in Multiemployer plans—This transition rule applies through 2014 for contributions made by applicable large employers participating in a multiemployer plan.

Under this transition rule, an applicable large employer will not be treated as failing to offer the opportunity to enroll in minimum essential coverage to a full-time employee (and the employee's child dependents) and will not be subject to a penalty with respect to a full-time employee if:

1. The employer is required to make a contribution to a multiemployer plan with respect to the full-time employee pursuant to a collective bargaining agreement or an appropriate related participation agreement,
2. Coverage under the multiemployer plan is offered to the full-time employee (and the employee's dependents), and
3. The coverage offered to the full-time employee is affordable and provides minimum value.

Coverage under a multiemployer plan will be considered affordable with respect to a full-time employee, if the employee's required contribution, if any, toward self-only health coverage does not exceed 9.5 percent of the wages reported to the qualified multiemployer plan, which may be determined based on actual wages or an hourly wage rate under the applicable collective bargaining agreement.

Employers participating in a multiemployer plan may also use any of the affordability safe harbors set forth in the proposed regulation.

If any penalty is due under section 4980H, it would be payable by a participating applicable large employer and that employer would be responsible for identifying it's full-time employees for this purpose (which would be based on hours of service for that employer).

If the applicable large employer contributes to one or more multiemployer plans and also maintains a single employer plan, the rule applies to each multiemployer plan but not to the single employer plan.

IRS recognizes that contributing employers may not be in a position to know now many hours any individual employee worked and that employees often work for multiple employers and it is impractical for any one employer, or the fund, to determine how many hours an employee worked.

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Transition Relief Cont.

For these reason, IRS request comments on how section 4980H should apply to employers participating in multiemployer plans after the transition relief expires.

Transition Relief: Coverage for Dependents—For those employers that currently offer coverage only to their employees, and not to dependents, transition relief is provided. If these employers take steps during the plan year that begins in 2014 toward offering dependent coverage, they will not be liable for any penalty solely on account of a failure to offer coverage to dependents for that plan year.

Transition Relief: Applicable Large Employer Determination for 2014—For most employers, their status as an applicable large employer will be evident without the need for an actual employee calculation (for example, employers with a number of employees that is well en excess of the 50-employee threshold). For some employers (those close to the 50-employee threshold), a calculation will be required and will be performed for the first time. Transition relief for the 2014 calendar year allows an employer the option to determine it's status as an applicable large employer by reference to a period of at least six consecutive calendar months, as chosen by the employer, in the 2013 calendar year (rather than the entire 2013 calendar year). An employer may determine whether it is an applicable large employer for 2014 by determining whether it employed an average of at least 50 full-time employees on a business days during any consecutive six-month period in 2013.

Transition Relief: Variable Hour Employee Definition—Transition relief is provided for determining who is a variable hour employee. This transition relief is not clear and we are waiting for further clarification from HHS, IRS or CMS.

SecureOne Benefit Administrators keeps our clients informed and provides a detailed map to help navigate this moving target called "PPACA" or "Obamacare".

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