New “Final” PPACA Regulations

Final Pay or Play & 90-Day Waiting Period Provisions

The University of Alabama System, June 19, 2014

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Final Pay or Play Provisions
Final Employer Pay or Play Provisions

- Final Pay or Play Provisions issued February 10, 2014 implement the employer shared responsibility regulations under PPACA
  - Final regulations adopt many of the proposed rules, as well as add many new changes

- Highlights of new guidance include:
  - Delayed employer mandate for some employers;
  - Change in percentage of covered employees;
  - Coverage of dependents;
  - Effective date for non-calendar year plans;
  - Look-Back measurement period; and
  - Determination of full-time status for certain employees
Final Employer Pay or Play Provisions

- Delay final pay or play provisions until 2016 for 50 to 99 FTEs
  - Use any 6 consecutive month period in 2014 as reference
- Must also certify on a prescribed form that:
  - No reduction of workforce or overall hours of service to meet transition relief February 9, 2014 – December 31, 2014 and
  - No elimination or material reduction of health coverage offered as of February 9, 2014, during February 9, 2014 – December 31, 2015 (for non-calendar year plans the last day of the employer’s 2015 plan year)
- Large employers continue to be subject to the final pay or play rules beginning in 2015
Final Employer Pay or Play Provisions

- New transition rules include:
  - Large employers (100 or more FTEs) in 2015 subject to pay or play mandate required to provide MEC for at least 70% of full-time employees (30 or more hours per week) rather than 95%:
    - This does NOT affect MV and Affordability requirements
    - Back to 95% in 2016
  - Relief for dependent coverage:
    - Requirement to ADD children up to age 26 delayed until 2016
    - Applies only to employers not currently offering dependent coverage, or offering to some dependents but not all, or is not MEC
    - Children no longer includes stepchildren or foster children
Final Employer Pay or Play Provisions

- Retains prior transition rules including:
  - Look-back measurement period
    - 2015 - variable hour employees’ full-time status may be determined based on 6 month look-back measurement period
    - 6 month look-back may be used even if stability period is 12 months
    - For 2015 the optional transition rule applies – use of the measurement period of at least 6 months but less than 12 months even if the employer’s stability period was 12 months
    - Ongoing final pay or play rules require that the stability period be the longer of 6 months or the length of the measurement period for the first year that pay or play originally in effect
    - Non-calendar year plan effective dates and requirements
Final Employer Pay or Play Provisions

- Permits a non-calendar year plan to begin meeting its shared responsibility requirements on the first day of the plan’s 2015 calendar year rather than January 1, 2015 and avoid the penalty if:
  - Employer maintains an unmodified non-calendar year plan
  - Complies with one of the three transition rules
    - Pre-2015 Eligibility Transition Rule
    - Significant Percentage Transition Guidance (All Employees Rule)
    - Significant Percentage Transition Guidance (Full-Time Employees Rule)
  - Meets the coverage rules, offering affordable coverage providing MV no later than the first day of 2015 plan year and the employee is not eligible for coverage under a calendar year group health plan
  - Modification of the percentage of covered employees
Final Employer Pay or Play Provisions

“Employee” categories not considered full-time employees

- Volunteers
  - Bona fide volunteers for a government or tax-exempt entity
- Seasonal employees
  - Positions that have annual employment of 6 months or less
- Student work-study programs
  - Certain student service under work-study programs
- Adjunct faculty
  - Reasonable and consistent method for crediting hours
- Educational employees
  - Teachers are not treated as part-time based upon school’s schedule
Final PPACA 90-Day Waiting Period Provisions
In General

- No more than 90 day wait
  - Count all calendar days beginning on enrollment date including weekends and holidays
- Health coverage eligibility conditions based solely on the lapse of a time period are permissible for no more than 90 days
- Period before late or special enrollment is not waiting period
No More than 90 Calendar Days

Example A - No more than 90 calendar days beginning on enrollment date

- **Facts**
  - In 2015 Group Health Plan provides FT employees eligible for plan coverage
  - Alice Cooper begins employment as FT employee on January 19, 2015. (February has 28 days in 2015.)

- **Conclusion**
  - Alice HAS to become eligible for coverage effective no later than April 19
  - Coverage under the plan must become effective no later than April 19 (the 91st day after employment starts)
  - 1/19/15 – 4/18/15 (inclusive of 1/19 and 4/18) = 90 days = Waiting Period
  - Coverage Begins no later than 4/19 – the 91st day of employment
Period Before Eligibility Period Is NOT Part of “Waiting Period”

Example B - Waiting Period starts once ELIGIBILITY starts

- **Facts**
  - Same Plan as A, but also must be a salaried employee to be eligible (assume meets PPACA and nondiscrimination requirements)
  - Billy Squier begins employment as hourly employee on January 19, 2015
  - Billy is not eligible for coverage and does not become enrolled
  - Billy is promoted on April 11 and becomes eligible for Plan

- **Conclusion**
  - January 19 through April 10 is not counted because he is not eligible for the Plan
  - Billy would HAVE to become enrolled no later than July 10
  - Coverage has to be effective no later than the 91st day after enrollment
  - 4/11/15 – 7/09/15 (inclusive of 4/11 and 7/09) = 90 days = Waiting Period
  - Coverage Begins no later than 7/10– the 91st day of eligibility
Delay Caused Solely by Employee Inaction

Example C - Waiting Period starts once ELIGIBILITY starts but EE waits to submit enrollment packet

• Facts
  – Same Plan as A. Eligibility is effective first day of payroll period after employee submits completed enrollment forms which are distributed on first day of employment
  – Chuck Berry begins employment on 10/31
  – Chuck submits forms on January 28, the 90th day after employment
  – First payroll period after the submission begins on February 4, 7 days later

• Conclusion
  – Chuck’s coverage could have started on 1/29 but he was late
  – Plan meets the requirement even though Chuck’s actual enrollment is after the 91st day
  – Chuck’s coverage can start on February 4 because he COULD have sent in forms timely to meet the 90 day requirement
Variable Hours or Specific Hour Requirement

- If Plan conditions eligibility on full-time or specific hours of service and employer reasonably believes the EE will not be FT, Plan can use a measurement period to determine if condition is met if measurement period:
  - does not exceed 12 months
  - begins on any date between start date & first day of first calendar month following start date and
  - coverage is effective no later than 13 months from start date, plus time remaining until first day of next calendar month

- If Plan conditions eligibility on completion of a number of hours of service (not greater than 1,200 hours)
  - Waiting period starts first day afterwards, cannot exceed 90 days
  - Hours-of-service requirement can only be used once
Reasonable to Assume EE may not be Full-Time

Example D - Variable or not reasonable to assume FT

- Facts
  - Same Plan as A
  - Dave Matthews begins work on 11/26/14 but with variable hours that will fluctuate depending on availability of work and Dave’s availability while he is not promoting his next album between 20 and 45 hours per week
  - It cannot reasonably be determined how many hours he would work
  - Plan uses 12 month measurement period
  - Coverage is effective the first day of the calendar month following submission of completed enrollment forms
  - On 11/25/15 it is determined that Dave did work enough hours to be FT and his coverage is elected and will start on 1-1-16
Example D - Variable or not reasonable to assume FT (cont.)

- Conclusion – the measurement period is permissible
  - Is not considered designed to avoid compliance with 90-day waiting period limitation
  - Plan may use reasonable period of time to determine whether variable-hour EE is FT provided:
    - period is no longer than 12 months
    - period begins on date between employee’s start date and first day of next calendar month (inclusive)
    - coverage is made effective no later than 13 months from Dave’s start date plus, if the employee’s start date is not the first day of a calendar month, the time remaining until the first day of the next calendar month and
    - In addition to measurement period, no more than 90 days elapse prior to the employee’s eligibility for coverage
Orientation Periods

- New “reasonable and bona fide employment-based orientation period" added in addition to 90-day waiting period requirement
- Can delay start of the waiting period until after orientation period is complete, if it does not exceed one month, to the safe harbor substantive eligibility conditions
  - May add one calendar month after start date and subtract one calendar day, if orientation period ends on/before end of next calendar month
  - If after adding a calendar month the orientation date does not end in the next calendar month following the month of the employee’s start date, the last day must be the last day of the next calendar month
Rehire Rules

- Waiting periods for rehires
  - May require terminated employee rehired by same employer to meet the plan’s eligibility criteria again, if reasonable under circumstances and not subterfuge to avoid compliance with 90-day waiting period
  - Covers employee move from a job with health coverage to a job without health coverage and then move to an eligible job classification
Rehire Rules

Example E - Rehires

- Facts
  - Same Plan as A
  - Eric Clapton retires after 30 years of service with Cream to start solo career
  - It does not work out as a solo performer so Eric comes back to Cream after just three months and Cream tells him he has to wait 90 days to enroll in the Plan

- Conclusion
  - Plan meets requirements and can make Eric wait until 90 days after he returns to the band and treat him like a newly eligible employee despite being the best guitar player of all time
Final PPACA 90-Day Waiting Period Provisions

Effective dates

- The 90-day waiting period requirement is effective as of the first plan year beginning 1/1/2014 but the regulations are effective as of the first plan year beginning on or after 1/1/2015
- Proposed regulations open for comment and will not become final and effective prior to 1/1/2015
Final PPACA Reporting Requirements

- Reporting requirements
  - Code Sec. 6055 – annual reporting of minimum essential coverage
  - Code Sec. 6056 – annual reporting for large employers under Pay or Play mandate

- Deadlines for reporting
  - Statements for individuals and FTEs – February 1, 2016
  - Reporting to the IRS – March 1, 2016 or March 31, 2016 (if electronically filed)

- Combined form reporting
- Simplified employer reporting for qualified offer
Questions?