New IRS Regulations Delay, Modify ACA Employer Health Coverage Mandate

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The Affordable Care Act (ACA) generally provides that all employers having 50 or more employees who work 30 or more hours per week must offer health insurance coverage to these employees. This "employer mandate" was originally slated to take effect January 1, 2014. Last year, however, the Obama administration delayed the effective date of the mandate to 2015 for all covered employers. Recently the IRS issued final regulations further delaying the employer mandate to 2016 for employers with more than 50 but fewer than 100 employees, and easing compliance for larger employers who remain subject to the mandate beginning in 2015.

Background

As enacted by Congress in 2010, the ACA included health insurance coverage mandates applicable to both individuals and employers. The individual mandate took effect this year, essentially on schedule. The employer mandate was also scheduled to take effect in 2014, but in the face of rising concerns about the feasibility of implementing the mandate, the Obama administration delayed the effective date of the employer (but not the employee) mandate for one year, to January 1, 2015.

Concerns have been raised that the government lacked any legal basis under the ACA for delaying the employer mandate, while ACA opponents have continued to push for further delays to, or outright repeal of, both mandates. These concerns intensified when state and federal government implementation of the online health insurance marketplaces, which were designed to facilitate compliance with the individual mandate, proved to be seriously flawed.

Timeout!

Clearly in response to these concerns, on February 10th the Obama administration caused the IRS to issue final U.S. Treasury regulations further delaying the effective date of the employer mandate to January 1, 2016 – but only for employers with fewer than 100 full-time employees. For now at least, larger employers will still be subject to the mandate as of the previously-delayed effective date of January 1, 2015, while employers with fewer than 50 employees remain exempt. However, the regulations also include provisions designed to ease compliance for these larger employers during 2015 only.
Easing In

Under the ACA requirements as originally written, employers subject to the mandate would be noncompliant unless at least 95% of their employees working 30 or more hours per week were offered coverage. For 2015 only, the final regulations provide that these employers need only offer coverage to 70% or more of their full-time employees. The Treasury states that this transition relief should help employers who, for example, currently offer coverage to employees working 35 or more hours per week, but not those working 30 to 34 hours. This transition rule will give larger employers additional time to offer coverage to at least 95% of their full-time employees, the original requirement that will apply to all employers subject to the mandate beginning in 2016.

It should be emphasized that this transition rule only applies to employers with 100 or more full-time employees, since employers with 51-99 employees are fully exempt from the mandate in 2015 in any case, while those with 50 or fewer employees are permanently exempt.

Other Moves Afoot

On other fronts, in addition to ongoing attempts by the Republican majority in the U.S. House of Representatives to delay or repeal the mandates (or to repeal the ACA entirely), legislation has recently been introduced that would raise the definition of a full-time employee for ACA purposes from 30 to 40 hours per week. This change would in effect roll back the employer mandate for many employers, and would permit those still subject to the mandate to limit coverage to a smaller group of "true" full-time workers (the Save American Workers Act, H.R. 2575). Advocates maintain that this change not only eases compliance for employers, but would also help avoid the loss of jobs and working hours resulting from employer attempts to avoid the mandate by shrinking (or failing to grow) their workforces, or reducing employees’ work schedules below the current definition of 30 hours per week. However, as long as the White House and Senate remain in Democratic hands, prospects for enactment of such legislation appear dim.

Details, Details...

The final regulations also address a number of specific issues raised by the employer mandate. The rules clarify that volunteer hours contributed to governmental or tax-exempt entities (by volunteer firefighters and the like) don’t count for purposes of the 30 hour per week rule. The regulations also clarify that teachers are not treated as part-time employees just because schools are closed or operate on a limited basis for part of the year. However, true seasonal employees (those who customarily work six months or less each year) are not treated as full-time employees, nor are work/study students employed by colleges and universities. The rules also establish a safe harbor test for adjunct faculty members, who for purposes of the 30 hour limit are deemed to work 2½ hours for each hour of actual teaching or classroom time. Finally, the regulations clarify the "look-back" rules that employers may use to determine whether they are subject to the mandate, as well as the safe harbors for determining whether the coverage offered by the employer is
"affordable," as the ACA requires.

The final regulations also extend a number of 2014 transition rules to 2015, indicating that some or all of these rules may be further extended should circumstances warrant. Finally, the Treasury is studying ways to simplify employer reporting requirements in connection with the employer mandate.

**Bottom Line**

The final regulations give employers with 51 to 99 employees a one-year pass on compliance with the employer mandate, for 2015 only. The rules also temporarily ease compliance for employers with 100 or more employees—again, for 2015 only. These rules also clarify a number of issues that had remained murky under the 2012 proposed regulations. Clearly ACA implementation remains a work in progress. Employers must continue to be prepared for further regulatory developments on the horizon. Moreover, depending upon future election results and pending court decisions, more sweeping changes could lie ahead in the months and years to come.