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Further Delays to the Employer Mandate Provision of the Patient Protection and Affordable Care Act

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In early February, the Obama Administration decided to further delay the effective date of the "employer mandate" provision of the Patient Protection and Affordable Care Act's ("PPACA") for certain employers. Originally scheduled to go into effect on January 1, 2014, and then previously delayed until January 1, 2015, the IRS has now passed new Regulations postponing the requirement that employers offer health insurance benefits to employees or face a fine until January 1, 2016.

The "employer mandate" of the PPACA requires that employers with over 50 full-time employees provide "minimum" health insurance benefits to full-time employees or face a fine in the form of a tax penalty. The PPACA defines a "minimum" insurance plan as one that covers 60% of the costs of covered services, and it defines a "full-time" employee as one who works 30 hours a week or more.

The January 1, 2016 date applies only to employers with 50 to 100 full-time employees, and the PPACA does not require employers with fewer than 50 full-time employees to provide health benefits to those employees. However, employers of 50 to 100 full-time employees seeking to avoid penalties under the PPACA in 2015 must certify on a prescribed form that they did not reduce workforce numbers specifically to avoid the requirements of the Act.

Large employers (those with greater than 100 full-time employees) must still adhere to the January 1, 2015 date previously set forth. The new Regulations, however, ease the requirements placed on these large employers. Specifically, in order to avoid paying a penalty, any employer subject to the mandate in 2015 will only need to offer health benefits to 70% of full-time employees during 2015, rising to 95% in 2016. This "gradual" enactment of the mandate is designed to accommodate large employers who may now offer health insurance to employees who work 35 hours a week, and not to those working 30-34 hours a week. Thus, although the Regulations still require employers of more than 100 full-time employees to provide health insurance to these employees in 2015, the new Regulations give these employers time to expand their benefits to those working 30 hours or more a week as required by the Act.

While the PPACA also requires employers to offer insurance coverage to employees' dependents, the new Regulations set forth that a penalty will not apply during 2015 so long as the employer is taking steps to arrange for such coverage effective in 2016.

Additionally, the new Regulations provide further clarification on exactly who is considered to be a full-time or part-time employee. For example, hours worked by volunteers of a governmental or tax-exempt agency will not cause these individuals to be considered full-time employees under the Act, but teachers and other educational employees cannot be considered part-time because the school at which they are employed is closed during the summer or operating on a limited schedule, and hours worked by students in a work-study program will not be counted towards the consideration of whether they are full-time employees. Seasonal employees whose typical annual employment will last six months or less are also not considered full-time employees under the Act. For educational institutions with adjunct faculty, the IRS has directed these institutions to use a "reasonable" method consistent with the provisions of the PPACA, but has promised to issue a "bright line" rule in the future that will set forth specifically how to address these employees.

The new IRS Regulations can be found at 26 C.F.R. Parts 1, 54, and 301.

The Obama Administration's further delay of the employer mandate has led to both praise and criticism, and has also left some questions as to whether the mandate will ever be fully put into effect.

If your institution has questions or concerns about this topic and you would like further information, please email James G. Ryan at jryan@cullenanddykman.com or call him at 516-357-3750. This article was written with Ariel Ronneburger, an associate at the firm.