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“Pay or Play” Penalty - Transition Relief for Fiscal Year Plans

Effective Jan. 1, 2014, the Affordable Care Act (ACA) imposes a shared responsibility penalty on large employers that do not offer minimum essential coverage to substantially all full-time employees and their dependents. Large employers that offer coverage may still be liable for a penalty if the coverage is unaffordable or does not provide minimum value.

On Jan. 2, 2013, the Internal Revenue Service (IRS) released long-awaited **proposed regulations** on ACA’s employer shared responsibility provisions. Although the proposed regulations are not final, employers may rely on them until further guidance is issued. The proposed regulations contain important transition relief for plans that do not operate on a calendar year basis (fiscal year plans).

PLAN YEAR SELECTION

The proposed rules state that the plan year must be 12 consecutive months, unless a short plan year of less than 12 months is permitted for a valid business purpose. A plan year may begin on any day of a year and must end on the preceding day in the immediately following year (for example, a plan year that begins on Nov. 1, 2014, must end on Oct. 31, 2015). A calendar year plan year is a period of 12 consecutive months beginning on Jan. 1 and ending on Dec. 31 of the same calendar year.

Once established, a plan year is effective for the first plan year and for all subsequent plan years, unless changed, provided that such change will only be recognized if made for a valid business purpose. Note that a change in the plan year is not permitted if a principal purpose of the change in plan year is to avoid the employer shared responsibility requirements.

CONCERNS FOR FISCAL YEAR PLANS (NON-CALENDAR YEAR PLANS)

ACA’s pay or play penalty goes into effect on Jan. 1, 2014, for both employers with calendar year plans and employers with fiscal year plans. Because it may be difficult to make mid-year changes to a plan’s terms, employers with fiscal year plans should evaluate whether they need to make plan changes for the 2013 plan year to avoid an ACA penalty.

To minimize the impact of ACA’s shared responsibility provisions on 2013 plan years, the proposed regulations include transition relief for employers that, as of **Dec. 27, 2012**, offered coverage under fiscal year plans. Transition relief is provided for:

- Individuals who would be eligible for coverage as of the first day of the 2014 plan year under the plan’s eligibility terms in effect on Dec. 27, 2012; and
- Other employees if a significant percentage of the employer’s workforce was eligible for coverage under one or more fiscal year plans.

TRANSITION RELIEF

Eligible Individuals

The proposed regulations provide transition relief with respect to employees who would be eligible for coverage as of the first day of the 2014 plan year (that is, the plan year starting in 2014) under the plan’s eligibility terms in effect on Dec. 27, 2012. If these employees are offered affordable, minimum value coverage no later than the first day of the 2014 plan year, the large employer will not be liable for a penalty with respect to these employees for the period prior to the 2014 plan year. This relief gives employers with fiscal year plans additional time to make sure their plan’s coverage is affordable and provides minimum value.

Other Employees

The proposed regulations also provide transition relief for employers that have a significant percentage of their employees eligible for or covered under one or more fiscal years plans that have the same plan year as of Dec. 27, 2012. This relief gives employers with fiscal year plans additional time to expand their plans’ eligibility rules. To qualify for this relief:

- The fiscal year plan (including any other fiscal year plans that have the same plan year) must cover at least one-quarter of the large employer’s employees as of Dec. 27, 2012; OR
- At least one-third of the large employer’s employees must have been offered coverage under the fiscal year plan or plans during the most recent open enrollment period before Dec. 27, 2012.

If the transition relief applies, the employer will not be liable for a penalty for any period prior to the 2014 plan year with respect to employees who are offered affordable, minimum value coverage no later than the first day of the 2014 plan year and who would not have been eligible for coverage under any calendar year group health plan maintained by the employer as of Dec. 27, 2012.

For example, if during the most recent open enrollment period before Dec. 27, 2012, an employer offered coverage under a fiscal year plan with a plan year starting on July 1, 2013, to at least one-third of its employees, the employer could avoid liability for a shared responsibility payment if, by July 1, 2014, it expanded the plan to offer coverage satisfying ACA’s shared responsibility provisions to the full-time employees who had not been offered coverage.

For purposes of this transition relief, a large employer may determine the percentage of its employees covered under the fiscal year plan or plans as of the end of the most recent enrollment period or any date between Oct. 31, 2012, and Dec. 27, 2012.

MORE INFORMATION

For more information on ACA’s pay or play requirements, please contact Wine Sergi & Company LLC.