

IRS/Treasury Provides One-Year Delay For Certain Employer Health Coverage Reporting And Employer "Pay Or Play" Penalty Taxes

Employer Health Coverage Reporting and Employer "Pay or Play" Penalties Delayed

On July 9, 2013, the U.S. Treasury Department and Internal Revenue Service ("IRS") issued formal guidance (IRS Notice 2013-45; herein, the "Notice")¹ that provides for a one year delay until 2015 with respect to (i) certain information reporting requirements imposed on employers and others that provide health coverage to employees and (ii) the assessment of excise tax penalties on certain employers under the employer "pay or play" mandate (also known, more formally, as the "employer shared responsibility penalty").² Prior to the announcement of this one year delay, such information reporting and employer penalty rules were scheduled to apply in 2014. Accordingly, employers will now have more time to develop appropriate recordkeeping and reporting systems in order to comply with the reporting requirements in 2015, and to review and, as appropriate, modify their health plans to avoid employer shared responsibility penalties that are scheduled to begin in 2015.

Employer Shared Responsibility Penalty Reporting

Under the Patient Protection and Affordable Care Act, as amended ("ACA"), each employer subject to the employer shared responsibility penalty rules (*i.e.*, an employer that employs an average of at least 50 full-time employees, including "full-time equivalent employees," on business days during the preceding calendar year (known as an "applicable large employer")) is required to file an annual return with the IRS that reports the terms and conditions of the health care coverage provided to the employer's full-time employees for the year. The information reported includes whether the employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential health coverage under an employer-sponsored plan and, if it does, the length of any eligibility waiting period, the months during the calendar year when coverage under the plan was available, the monthly premium for the lowest cost option in each coverage category under the plan, employer's share of the total allowed costs of benefits provided under the plan, and for each full-time employee the months during which the full-time employee (or any dependents) were covered under the employer-sponsored plan. Further, applicable large employers will need to furnish to each full-time employee whose information is required to be reported to the IRS by such employer a written statement that includes the employer's contact information and information relating to health plan coverage provided to the particular employee (and his/her dependents) that is required to be reported in the report to the IRS.

Minimum Essential Coverage Reporting

In addition, under the ACA, employers that sponsor self-insured health plans, health insurance issuers, government agencies and other persons offering minimum essential health coverage (collectively, "health reporting entities") are required to file annual information returns with the IRS reporting information for each individual for whom minimum essential health coverage is provided by such reporting entity. Such information returns must contain, among other things, information concerning the name and taxpayer identification number of the primary insured and each other individual covered by the policy or plan, dates each such individual was covered, whether the coverage was offered through the health exchanges and the portion of the health coverage premium paid by the employer.

¹ The Notice can be found at: <http://www.irs.gov/pub/irs-drop/n-13-45.PDF>

² For a detailed discussion of the employer shared responsibility penalty rules, please see our Alert dated March 2013, which can be found [here](#).

Each health reporting entity is required to furnish a written statement to each individual listed on the information return that shows the information reported on such return that relates to such individual. Prior to the issuance of the transition relief under the Notice, the above reporting requirements were scheduled to become effective in 2014.

Employer Shared Responsibility Penalty

Under the employer shared responsibility penalty rules, an applicable large employer may be subject to an excise tax penalty if one or more of the employer's full-time employees obtains a premium cost subsidy with respect to exchanged-based health coverage and either (i) the employer fails to offer health plan coverage to a sufficient number of its full-time employees (and their dependents) or (ii) offers health plan coverage to a sufficient number of full-time employees (and their dependents) but such coverage is deemed "unaffordable" or fails to provide a prescribed "minimum value" of benefits. The actual penalty calculation depends on the number of full-time employees of an employer and the number of full-time employees who receive subsidized exchange-based coverage and whether the employer "fails to offer coverage" or "offers coverage that is unaffordable or fails to provide minimum value."

Transition Relief

The Notice provides that the above-described information reporting requirements will not apply for 2014. Instead, they will first apply in 2015. Although the reporting requirements are deferred until 2015, the IRS encourages entities to voluntarily comply with the information reporting requirements in 2014 in order to facilitate their preparation for formal required compliance in 2015.

Because the information reporting requirements are a key element in enabling the IRS to determine whether an employer's employees are eligible for and the appropriate amount of an exchange-based subsidy and, in turn, whether the employer is subject to an employer shared responsibility penalty, the Notice provides that no employer shared responsibility penalties will be assessed for 2014. Thus, the employer penalty rules are instead now scheduled to apply beginning in 2015.

The Notice makes clear, however, that access to the health plan exchanges and to exchange-based premium subsidies are unaffected by the transition relief granted and thus eligibility for such subsidies will begin in 2014. Moreover, the Notice states that the transition relief in 2014 with respect to information reporting and employer shared responsibility penalties has no effect on the effective dates or application of other ACA provisions (e.g., the "individual pay or play" health coverage mandate; provision of notices describing the health plan exchanges (see our prior Alert found [here](#)) and summaries of benefits and coverage).

Next Steps for Employers

The one year delay of the effective date with regard to certain information reporting and assessment of employer shared responsibility penalties is certainly welcome news for employers trying to timely comply with the myriad of requirements under the ACA. While the extra year to meet the information reporting requirements is helpful (e.g., initial information statements for employees are now due, for 2015, by January 31, 2016, instead of, for 2014, by January 31, 2015), employers should still be proactive in getting ready to comply with the information reporting requirements in 2015 and in structuring their employer-sponsored health plans to avoid the imposition of employer shared responsibility penalties (unless they have decided not to do so).

Accordingly, we suggest that employers continue in their preparations to comply with the information reporting requirements, though such employer actions may reflect the newly granted one-year delayed effective date. With respect to the one year delay in the assessment of employer shared responsibility penalties, employers may wish to consider (or reconsider) the following:

- Have changes to the employer's health plan been made or are they intended to be made later this year to avoid employer shared responsibility penalties in anticipation of the original (pre-transition relief) 2014 effective date?

Such changes may include (i) eligibility based on a minimum 30 hours of service per week standard, (ii) reducing the employee's share of the premium cost for employee-only coverage to meet the employer penalty rules' "affordability" requirement, (iii) reducing employee hours of service below 30 hours per week (to avoid full-time employee status), and (iv) eliminating employer-provided health coverage entirely. In light of the one year delay in applying the employer shared responsibility penalty rules, employers may wish to reconsider such actions taken or contemplated for 2014.

- Establishment of look back measurement periods and related stability periods for purposes of determining which employees are "full-time employees" for employer shared responsibility penalty purposes can now be deferred to next year. It is not clear, however, whether special transition rules previously provided to employers in making such initial measurement period determinations for 2014 will be permitted for the initial employer penalty year in 2015. Hopefully, the IRS will issue guidance in this regard.
- As the determination of "applicable large employer" status is not relevant for 2014, employers need not track the status (and hours of service) of its "full-time equivalent employees" (*i.e.*, part-time employees) in 2013.

Conclusion

The one year reprieve from the IRS with respect to information reporting and employer shared responsibility penalties allows employers to catch their breath concerning two important ACA employer provisions. However, preparing for compliance with these reporting and employer penalty requirements is still on the horizon and therefore appropriate actions need to be taken to permit timely compliance in 2015. In addition, many other ACA requirements are still effective in 2014 so employers must stay diligent this year in order to satisfy such ACA requirements. Please contact any of the attorneys listed below if you have any questions concerning the impact of the special one year delay transition relief under the Notice or would like assistance with respect to the impact of any of ACA's requirements.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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