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Employer Mandate Relief Provided for Smaller Employers Under Final Regulations

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On February 10, 2014, the Department of Treasury (the "Treasury") and Internal Revenue Service (IRS) issued final regulations on the requirement that employers provide affordable health insurance to employees (the "Employer Mandate") and the associated "Pay or Play" penalty under health care reform. This article provides a summary of the transitional relief available during 2015 under the final regulations for:

- Employers* with at least 50 but less than 100 full-time employees that satisfy certain transitional relief requirements, and
- Employers with 100 or more full-time employees, or employers with at least 50 but less than 100 employees that do not satisfy certain transitional relief requirements.

*For purposes of the Employer Mandate and Pay or Play penalties, employer includes for-profit, non-profit and governmental entity employers.

What Relief Is Available for Employers With Less Than 100 Full-Time Employees?

Under the final regulations, an employer with at least 50 but fewer than 100 full-time employees and full-time equivalents in 2014 will **not** be subject to the Pay or Play penalty under health care reform during 2015 if it satisfies the following conditions:

- **Limited Number of Full-Time Employees.** The employer must employ fewer than 100 full-time employees and full-time equivalents during 2014. The number of full-time employees and full-time equivalents is determined in accordance with the otherwise applicable rules for determining an employer's status as an applicable large employer.
- **Maintenance of Workforce.** Beginning February 9, 2014 through December 31, 2014,* the employer may not reduce the size of its workforce or the overall hours of service of its employees in order to qualify for transition relief.
- **Maintenance of Health Coverage.** Beginning February 9, 2014 through December 31, 2014,* the employer may not eliminate or materially reduce (as described below) the health coverage it offered as of February 9, 2014.

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* For employers with non-calendar-year plans, replace “December 2014” with “the first day of the 2015 calendar year”

An employer will not be treated as materially reducing health coverage if:

- It continues to offer each employee who is eligible for coverage an employer contribution toward the cost of employee-only coverage that either:
 - is at least 95 percent of the dollar amount of the contribution toward such coverage that the employer was offering on February 9, 2014, or
 - is at least the same percentage of the cost of coverage that the employer was offering to contribute toward coverage on February 9, 2014,
- In the event of a change in benefits under the employee-only coverage offered, that coverage provides minimum value after the change, **and**
- It does not alter the terms of its group health plans to narrow or reduce the class or classes of employees (or the employees' dependents) to whom coverage under those plans was offered as of February 9, 2014.

The final regulations clarify that the aforementioned transitional relief is available for 2015 only. Beginning in January 1, 2016 (or, for employers with non-calendar-year plans, the first day of the 2016 plan year), all employers with at least 50 but fewer than 100 employees will be subject to the Employer Mandate and the associated Pay or Play penalties.

What Relief Is Available for Employers With 100 or More Full-Time Employees?

Beginning January 1, 2015 (or, for employers with non-calendar-year plans, the first day of the 2015 plan year), an employer that (i) employed at least 100 full-time employees and full-time equivalents in 2014, or (ii) employed at least 50 but fewer than 100 full-time employees and full-time equivalents in 2014 but does not satisfy the transitional relief requirements described in the Q&A above, will be liable for a Pay or Play penalty only if:

- The employer does not offer health coverage or offers coverage to fewer than “substantially all” (70 percent; the requirement was previously 95 percent) of its full-time employees and dependents of those employees, and at least one of the full-time employees receives a premium tax credit to pay for coverage on the health insurance exchange (the "Exchange"), or
- The employer offers health coverage to “substantially all” (70 percent; the requirement was previously 95 percent) of its full-time employees and dependents of those employees, but at least one full-time employee receives a premium tax credit to help pay for coverage on the Exchange because the

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employer (i) did not offer coverage to that employee, or (ii) the coverage offered by the employer was either unaffordable or did not provide minimum value.

Beginning January 1, 2016 (or, for non-calendar-year plans, the first day of the 2016 plan year), “95 percent” should be substituted for “70 percent” in the bullets above.

Practice Pointer: An employer that provides coverage to “substantially all” (70 percent during 2015; 95 percent in 2016-on) of its employees may still be liable for a Pay or Play penalty. The penalty is equal to \$3,000 per full-time employee that receives a premium tax credit to help pay for coverage on the Exchange because the employer (i) did not offer coverage to that employee, or (ii) the coverage offered by the employer was either unaffordable or did not provide minimum value.

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