

Health Care Reform: Some Temporary Relief for Employers

Connecticut Health Law

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Final Rules Issued on the “Pay or Play” Penalties for Employers of 50+ Employees

The IRS recently released final regulations regarding the employer shared responsibility payment (also known as the “pay or play” penalty) under the Affordable Care Act (ACA). These rules: (1) provide guidance for employers who are subject to the penalty; and (2) delay the penalty for certain employers who do not offer the required coverage in 2015.

Who Is Subject to the Penalty?

If you have fewer than 50 full-time equivalent employees as defined in the ACA (FTEs), you are not subject to the “pay or play” rules, so you will not owe a penalty if you do not offer coverage to your employees.

If you have at least 50 FTEs, you are an “applicable large employer” and you are required to offer “affordable” health insurance that provides “minimum value” to virtually all of your full-time employees (and their dependents). If you do not, you may have to pay a penalty.

However, the final rules provide some relief, including:

- For employers with at least 50 but fewer than 100 FTEs in 2014, the penalty will not apply for 2015 if the employer certifies that, for the period beginning on February 9, 2014 and ending on December 31, 2014, it did not reduce the size of its workforce or the overall hours of service of its employees in order to qualify for this relief. Additionally, the employer must certify that it did not eliminate or materially reduce any health care coverage it offered to eligible employees between February 9, 2014 and December 31, 2015.
- For 2015 only, employers of 100 or more FTEs may avoid the penalty if they offer appropriate coverage to at least 70% of their full-time employees (and their dependents, unless the transition relief noted below applies).

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- The requirement that applicable large employers offer coverage to the dependents of their full-time employees generally will not apply in 2015 if the employer takes steps to arrange for dependent coverage to begin in 2016.

Beginning in 2016, employers of 50 or more FTEs will be required to offer coverage to at least 95% of their full-time employees and their dependents.

Full-Time Employees

Under the ACA, “full-time employees” work on average at least 30 “hours of service” per week. The new rules provide two methods for determining whether an employee has sufficient hours of service to be a full-time employee and clarify whether certain workers are considered full-time, including teachers, seasonal employees and volunteers.

“Affordability” and “Minimum Value”

As noted above, applicable large employers must offer coverage that is “affordable” and provides “minimum value.”

- Coverage is “affordable” if the employee’s required contribution (for self-only coverage) is not more than 9.5% of household income. Since an employer may not know an employee’s household income, the new regulations offer three safe harbors that employers can use to determine affordability based on information that is readily available to the employer.

- A plan generally provides “minimum value” if it is designed to pay at least 60% of the total cost of medical services.