

REFORM *Update*

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The Department of Labor (DOL), the Department of Health and Human Services (DHHS) and the Internal Revenue Service (IRS) recently issued substantially identical FAQs on the health care reform requirements taking effect in 2014. These FAQs give stakeholders some insight into the agencies' views on automatic enrollment, new hire waiting periods and the employer "play or pay" requirements.

Delayed Effective Date for Auto Enrollment Rules

Health care reform requires employers to enroll employees automatically in one of the employer's group health plans. This rule applies only to employers who are subject to the Fair Labor Standards Act and have 200 or more full-time employees.

The health care reform acts do not include an effective date for the auto enrollment requirements. They require DOL to set the effective date through regulations. The DOL had intended to issue guidance by 2014. However, according to the latest FAQs, the guidance will not be ready at that time.

The FAQ confirms that employers do not need to comply with auto enrollment until the agencies issue the regulations. The DOL notes that the auto enrollment regulations will have a prospective effective date that will allow employers enough time to meet the requirements.

Details on the New Hire Waiting Period

In 2014, health plans will be required to have a new hire benefits-eligibility waiting period of 90 days or less. The agencies intend to issue more detailed guidance on this requirement. This requirement does not force employers to offer group health plan coverage to part-time or any other category of employee. Employers can establish eligibility conditions that are not based upon hours worked. For example, eligibility could depend on the specific job category, full-time status, or a required license.

The key will be that the eligibility condition must not have been created for the sole purpose of avoiding compliance with the 90-day requirement. The upcoming guidance will also clarify situations where eligibility depends on accumulating a number of service hours within a specific time period, such as 12 months. The intention is to allow such an approach as long as the service hours don't exceed the threshold determined by the guidance.

Anticipated Details of Shared Responsibility ("Play or Pay") Requirements

The health care market will change dramatically in 2014. New public health exchanges will launch, and the government will subsidize health coverage for anyone with low or moderate income. In addition, the mandate requiring everyone to either have coverage or pay a penalty will take effect.

Large employers, with at least 50 full-time employees (working 30 hours or more a week), will be required to offer a qualifying health plan to full-time employees or to pay a penalty. Qualifying health

coverage has been defined as a plan offering at least a 60 percent benefit level, with an “affordable” premium. This means the employee’s cost for single coverage must be less than 9.5 percent of his or her household income.

The agencies will work out details on a number of issues regarding the employer mandate (“play or pay” requirements) taking stakeholder feedback into account.

Some of the details to be included in the official guidance relating to the “play or pay” rules are as follows:

- The IRS will allow employers to use an employee’s W-2 wages as a safe harbor for determining affordability.
- The IRS will establish a safe harbor regarding newly hired employees in the health plan’s waiting period. Penalties will not be assessed for employees who are not offered qualifying coverage for the first three months following their date of hire.
- The IRS intends to issue a 12-month look back/stability period for determining whether a new hire is considered a full-time employee.

The FAQs include proposed examples, applicable in 2014, that illustrate the IRS’ approach to some of these details:

Example 1: Newly-hired employee expected to work full-time

A large employer (at least 50 full-time employees) hires Employee X as a computer programmer on December 1. Employee X is expected to work full-time annually, and works full-time in December, January and February.

The employer offers health coverage to full-time employees and their dependents. Employee X must be allowed to enroll for coverage that is effective as of March 1st, or the employer faces a potential penalty for failing to offer coverage.

Example 2: Newly-hired employee working full-time on seasonal basis

The same employer hires Employee Y as a salesperson on December 1. Employee Y is expected to work full-time during the holiday season, but part-time for the remainder of the year. Employee Y works an average of 35 hours a week in December, January and February, and 20 hours a week in March, April and May.

At the end of the first three months, the employer must examine the situation. The three-month period of December through February does not reflect the average hours that Employee Y is expected to work annually. Thus, the employer can use a second three-month period as a look-back period. In this situation, Employee Y does not meet the full-time hourly requirement based on the second look-back period, which is more indicative of the normal work week, reflecting part-time status. In this case, the employer will not be assessed a fine for failing to offer coverage to Employee Y.

Example 3: Employee ineligible for plan by reason of job classification

The same facts from Example 1 apply; however, the employer does not offer health plan coverage to computer programmers as a category of employees. In this case, the 90-day waiting period does not apply because Employee X is excluded from plan eligibility. Although not specifically mentioned, the penalty for not offering coverage would apply because Employee X appears to work full-time.

Example 4: Part-time employee, hours of service requirement

An employer hires Employee Z to work 20 hours a week. The employer's health plan requires part-time employees to work 750 hours within 37 ½ weeks (approximately 9 months) to be eligible for health plan coverage. The waiting period begins when the employee completes 750 hours of service. The employer can apply the 90-day waiting period.

In this example, Employee Z will have worked part-time for almost a year before becoming eligible for health coverage. This delay would be permitted under the anticipated rules. No penalty will be assessed against the employer because this employee works part-time.

The Departments have requested comments on the FAQs. The Departments will issue guidance with more details on auto enrollment, the 90-day waiting period and the "play or pay" rules.

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