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Ken Berry, JD • Feb. 13, 2014

Once was not enough. First, the federal government delayed the "shared responsibilities" rules for employers under "Obamacare" for one year, until January 1, 2015. Now new final regulations issued on February 10, 2014 by the Treasury Department have postponed the employer mandate another year – until January 1, 2016 – for certain mid-sized employers.

[This is the sixth in a series of articles on new developments relating to the Patient Protection and Affordable Care Act of 2010 (aka "Obamacare").] See Also:

- Equality in Employer Health Care Plans Delayed
- IRS Proposes Fines for Noncompliance with Health Insurance Mandate
- IRS Faces Customer Service Challenges Under Obamacare
- New Bill Ups the Stakes in Obamacare Showdown
- New CBO Report Links Obamacare to Job Losses

Under the new regulations, businesses employing between 50 and 99 full-time employees (FTEs) now have an extra year to comply with the mandate to provide minimum essential health insurance coverage to eligible employees. An employer falling into this category in 2015 must certify that it didn't reduce its workforce below the 100-employee threshold just to qualify for the exemption.

Furthermore, beginning in 2015 large employers with 100 or more FTEs were initially required to provide coverage to at least 95% of those workers, or be subject to penalties. That requirement has been reduced to 70% for 2015 before being increased to the 95% level in 2016.

Note that the changes don't have affect on small employers with fewer than 50 FTEs.

- The time spent by volunteers of a tax-exempt entity (e.g., volunteer firefighters and emergency responders) will not cause them to be treated as FTEs.
- Teachers and other employees of educational institutions will not be considered part-time employees (PTEs) for the year simply because the school is closed or operating on a limited summer schedule.
- An employee who works on a seasonal basis during which usual employment is six months or less a year will generally not be treated as an FTE.
- Service performed by students under federal or state-sponsored work-study programs will not be counted in the determination of FTE status.
- Until further guidance is issued, employers of adjunct faculty are to use a "reasonable" method of counting hours of service for employees. The final regulations specifically say that crediting an adjunct faculty member with 2¼ hours of service per week for each hour of teaching or classroom time is a reasonable method for this purpose.

As was the case under proposed regulations issued in 2012, the final regulations allow employers to "look back" to the prior year to help determine if employees should be treated as FTEs or PTEs. The final regs also incorporate several safe harbor provisions in those proposed regs making it easier for employers to determine if coverage is affordable to employees. These safe harbors permit employers to use wages, hourly rates or the federal poverty level in determining affordability of the coverage they are offering.

Employers may determine whether they had at least 100 FTEs in the previous year by referring to a six-month period instead of a full year. This will help facilitate compliance for employers subject to the shared responsibility rules for the first time. If a firm operates on a fiscal year basis, rather than using a calendar year, it may start to comply with the shared responsibility rules by the onset of its 2015 plan year instead of the usual date of January 1, 2015.

Finally, the Treasury said it expects to issue final regulations this year that will be

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