What The Play or Pay Delay Means for Today

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This alert concerns employers with 50 or more employees or employee equivalents averaging 30 hours of service per week. On Tuesday, July 9, 2013, the Internal Revenue Service ("IRS") issued formal guidance confirming what news outlets reported the prior week - a delay in enforcing the Affordable Care Act ("ACA") requirements that employers who fail to offer the right type of coverage to employees averaging 30 or more hours of service per week be penalized if employees obtain subsidized coverage on an exchange in 2014. The link to this formal guidance (IRS Notice 2013 - 45) can be found here. In general, the notice acknowledges that requirements on employers to report information to the IRS about the coverages made available to employees was overly complex, and the agencies intend to simplify those reporting requirements. Since the agencies intend to utilize those reports to determine which employers violated the ACA "play or pay" requirements, they are delaying enforcement until 2015. In IRS Notice 2013 - 45, the IRS states (underlining added by author): "However, in preparation for the application of the Employer Shared Responsibility Provisions beginning in 2015, employers and other affected entities are encouraged to voluntarily comply for 2014 with the information reporting provisions (once the information reporting rules have been issued) and to maintain or expand health coverage in 2014. Real-world testing of reporting systems and plan designs through voluntary compliance for 2014 will contribute to a smoother transition to full implementation for 2015." **What This Means for Today** While clearer guidance would be welcomed, by recommending "voluntary compliance" in 2014 in order to increase the likelihood of full compliance in 2015, and not discussing the prior transition rules and allowances, it leaves open the questions of whether they will be "rolled forward" for purposes of 2015 compliance. The most notable of these transitional rules include (1) employers being able to use a six-month lookback or measurement period with a 12 month stability period, (2) certain fiscal year plans being able to delay compliance until the start of their plan year in the year of implementation, and (3) the ability to treat the offering of coverage to 95% of full-time employees as complying with the actual requirement to offer coverage to 100% of full-time employees. As of now, employers should expect to need to use a 12 month lookback or measurement period if they are using a 12 month stability period, and conservative fiscal year plan sponsors should plan on complying with these requirements as of January 1, 2015. For more information, please contact the Carlton Fields attorney with whom you usually work, or the author of this Legal News Alert.

Authored By

Lowell J. Walters