

ACA Waiting Period

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This alert should interest employers who sponsor a group health plan and impose a waiting period on new employee eligibility. Many employers require employees to work for a certain length of time before becoming eligible for employer-provided coverage. This is commonly called a “waiting period.” The Patient Protection and Affordable Care Act (ACA) prohibits waiting periods that exceed 90 days. On June 25, 2014, the agencies charged with implementing the ACA (the Department of Labor, Internal Revenue Service, and Department of Health and Human Services) issued regulations addressing health care reform’s 90day limit on waiting periods. Included in this guidance is the allowance of a “reasonable and bona fide employment-based orientation period” of up to 30 days that could be imposed before the waiting period. In our opinion, the two most important aspects of this regulation are as follows:

1. The term “reasonable and bona fide employment-based orientation period” is not defined, and the agencies plan to look at all the facts and circumstances surrounding an orientation period in order to assess whether it is reasonable and bona fide. Whether a job requires special skills will likely be vital to this assessment. The preamble to this guidance contains the following, useful statement: “During an orientation period, the Departments envision that an employer and employee will evaluate whether the employment situation is satisfactory for each party, and standard orientation and training processes will begin.”
2. Use of an orientation period still may not prevent an applicable large employer from incurring ACA penalties if a newly hired full-time employee is not offered coverage by the start of his or her fourth calendar month. For this reason, a bona fide orientation period might be more useful in helping large employers set coverage start dates with a particular payroll period or the 1st of the month, instead of actually delaying coverage.

The full regulation is available [here](#). For more information, please contact the Carlton Fields attorney with whom you usually work, or the author of this Legal News Alert.

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