

ACA Update - Delay in Implementation Does Not Mean Employers Can Delay Preparation

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A Human Resources E-Alert

The proposed employer shared responsibility regulations contain several transition rules to accommodate various employers and circumstances. With the delay in the implementation of the penalty provisions of the employer shared responsibility regulations, it is not clear whether these transition rules remain applicable.

Measurement Period Considerations

One transition rule allows employers intending to use a 12-month stability period for 2014 to use a measurement period that is less than 12-months long. This is contrary to the general rule in the proposed regulations that the stability period cannot be longer than the measurement period. The regulations include this transition rule because the IRS recognized that employers intending to establish a 12-month stability period beginning on January 1, 2014 would not have sufficient time after issuance of the proposed regulations to establish policies or to create procedures to measure their employees' hours of service during a 12-month measurement period.

With the implementation delay, employers now have sufficient time to establish policies and to create procedures to measure hours of service during a 12-month measurement period. Therefore, employers should not anticipate that the IRS will provide similar relief for 2015. Employers planning to use a 12-month stability period beginning January 1, 2015 may need to commence a 12-month measurement period sometime in October or November (depending on the length of the administrative period).

For example:

- Measurement period for plan year 2015: October 15, 2013 through October 14, 2014
- Administrative period: October 15, 2014 through December 31, 2014
- Stability periods: January 1, 2015 through December 31, 2015

Considerations for Non-Calendar Year Plans

Another transition rule provides relief for non-calendar year plans by delaying compliance until the first day of the plan year beginning after January 1, 2014, if certain conditions were met. The regulations include this transition rule because the IRS recognized that employers with non-calendar year plans would either have had to implement mid-year changes to plans (which is administratively burdensome) or, if using a look-back method to determine hours of service, would have had to begin measuring hours of service prior to the date the regulations were published. The former reason for providing the relief for 2014 may still be valid for 2015. Failure to extend this relief would require employers with non-calendar year plans either to comply before employers with calendar year plans or to make numerous mid-year changes. However, the latter reason for providing the relief is no longer valid. Therefore, it is unclear whether the IRS will provide similar relief for 2015. Employers with fiscal year plans should be prepared to comply with the employer shared responsibility provisions beginning with the first day of the plan

year beginning in 2014 or to implement mid-year changes to the plan effective on January 1, 2015.

Note: Please be aware that this information could change depending on any future guidance or regulations that may be issued.

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