9-30-2014

, Employers with 50 to 99 Employees: Do You Qualify for One-Year Delay of Pay-or-Play Penalties?

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Background

Under the Affordable Care Act (ACA) Employer Shared Responsibility provisions (also known as the Employer Mandate), a large employer is exposed to possible penalties (under IRC section 4980H) if it does not offer affordable and adequate health coverage to substantially all full-time employees.

A large employer is defined as one who employed on average at least 50 full-time employees or full-time employee equivalents on business days in the prior calendar year. However, one type of "transition relief" in the final regulations (issued in February 2014) is that "smaller" large employers who employ 50-99 full-time employees or full-time employee equivalents will qualify for a one-year delay to 2016 if they certify they meet specific requirements. Certification is provided by checking a box on Form 1094-C, but employers need to understand exactly what they are certifying to. This article explains the certification requirements and includes a worksheet to assist in determining whether an employer qualifies for the certification. Employers are not required to submit the worksheet with the Form 1094-C; it is only to help an employer determine if it qualifies for the one-year delay for small employers.

Form 1094-C is one of the forms large employers will use to comply with Large Employer Information Reporting requirements under IRC section 6056. Even though employers with 50-99 employees who qualify for the certification are not subject to penalties under IRC section 4980H (Employer Shared Responsibility penalties) for 2015, they are subject to the IRC section 6056 Large Employer Information reporting requirements as of January 1, 2015. Thus, "smaller" large employers will file Form 1094-C for purposes of *both* information reporting and certifying that they qualify for this transition rule.

(For more information about Large Employer Reporting Provisions, see our March 7, 2014 article entitled: Final Regs Simplify 6056 *Information Reporting for Large Employers,* at https://news.leavitt.com/health-care-reform/final-regs-simplify-irc-section-6056-information-reporting-large-employers/; our July 28, 2014 article entitled: *IRS Issues Draft Forms for Health Coverage Information Reporting by Employers* at *https://news.leavitt.com/health-care-reform/irs-issues-draft-forms-health-coverage-information-reporting-employers/)*; and our August 29, 2014 article entitled: *Short Summary of IRC 6056 Information Reporting Requirements* at *https://news.leavitt.com/health-care-reform/short-summary-irc-6056-information-reporting-requirements/)*

Certification for Employers with 50 to 99 Full-Time Employees

To certify that it qualifies for Section 4980H Transition Relief (Employer Shared Responsibility penalties), an employer with 50-99 full-time employees will check Box C on Form 1094-C in Part II, line 22, and will use indicator code A (50-99 Transition Relief) in Part III, Line 23, column (e). A summary of the requirements below is on page 11 of the draft 2014 Instructions for Forms 1094-C and 1095-C, which can be found at http://www.irs.gov/pub/irs-dft/i109495c--dft.pdf. The employer itself may be an "applicable large employer" (ALE) or may be part of an Aggregated ALE Group. Employers only qualify for the transition rule if they can certify to the following:

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- **Workforce size**
    - Employer had on average 50-99 full-time employees (and full-time equivalents) on business days in 2014.

- **No reduction in workforce or overall hours**
    - The employer did not reduce its workforce size or reduce employees' overall hours between February 9, 2014 and December 31, 2014, in order to qualify for the transition relief.
        - A workforce reduction due to "bona fide business reasons" is allowed however. For example, changes due to a sale of a division, economic changes in the industry or geographic area, termination for poor performance, or other similar changes unrelated to eligibility for the transition relief.

- **No reduction or elimination of health coverage**
    - Employer maintained the health coverage it offered, if any, as of February 9, 2014. For calendar-year plans, the employer must maintain the coverage through December 31, 2015; and for non-calendar year plans, the period is February 9, 2014 through the last day of the 2015 plan year.
    - An employer with the following will be deemed <u>not</u> to have eliminated or materially reduced health coverage:
        - The employer contribution for employee-only coverage continues to be at least 95% of the dollar amount the employer paid on February 9th, or at least the same percentage of the total cost if the cost increases after February 9th
        - If the employer changes the benefits offered for employee-only coverage, the new coverage must provide at least minimum value after the change
        - The employer did not reduce or narrow the class of employees (and dependents) who are eligible
    - <u>Example:</u> On February 9, 2014, an employer was contributing $300 per month for employee-only coverage that cost $400 per month. The new plan year began July 1, 2014 and the cost of employee-only coverage increased to $425 per month. The employer continues to offer to contribute $300 per month for the plan year beginning on July 1, 2014. The $25.00 increase in cost to the employee will not be treated for this purpose as an elimination or material reduction of health coverage offered because the employer contribution continues to be at least 95% of the dollar amount paid on February 9, 2014 (in fact the employer continues to pay 100% of what it previously paid.)

Certification by Employers Who have <u>Not</u> Been Providing Coverage

It appears that employers with 50-99 employees who have <u>not</u> been offering coverage can still certify and therefore wait until 2016 before exposure to Employer Shared Responsibility penalties. The Preamble to the final regulations (in section XV.D.6) states:

> "The Treasury Department and the IRS understand that application of section 4980H will involve changes for applicable large employers that did not previously offer coverage, or that did not offer affordable, minimum value coverage. A large percentage of those employers are in the smaller size range, such as those with fewer than 100 fulltime employees (including FTEs). To assist these employers in transitioning into compliance with section 4980H, the transition relief described below

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is provided for all of 2015 plus, in the case of any non-calendar plan year that begins in 2015 (2015 plan year), the portion of that 2015 plan year that falls in 2016."

Note: An IRS regulator informally indicated at a conference that an employer who has not been offering coverage cannot qualify for the one-year delay. However, the specific language in the preamble seems to say that employers with 50-99 employees who have not been offering coverage can still certify.

Compliance Deadlines

The certification is due at the same time as Large Employer Reporting. Large employer reporting is due the first quarter of 2016, but the reporting is for the period January 1 – December 31, 2015. This means that even though employers with 50- 99 full-time employees do NOT have to comply with Employer Shared Responsibility until 2016, they must still comply with Large Employer Reporting provisions as of January 1, 2015.

The specific due dates for employer reporting and certification in the first quarter of 2016 are February 28, 2016 for the 2015 calendar year, and March 31 if the form 1094-C is filed electronically.

Employer Worksheet (Employer = _____)
(Check all that apply and fill in the blanks. Keep in your files, do not attach to Form 1094-C)

A.____Employer had 50-99 full-time employees and full-time equivalents in 2014.

B.____Employer had more than 99 full-time employees and full-time equivalents in 2014, but between Feb. 9 and Dec. 31, 2014 reduced its workforce (or employees' hours) to fewer than 99 full-time employees, but this was only due to *bona fide business reasons* (changes were *not* made to try to qualify for this transition rule). (To document this, fill in the blanks below.)

1) Initial number of employees (above 99): _____

2) Number of employees who quit_____

3) Number of employees who were terminated for cause_____

4) Number of employees who were laid off due to economic conditions _____

5). Other reasons for reduction in workforce size and number of employees
_____

C.____Between Feb. 9, 2014, and Dec. 31, 2015 (or, for a non-calendar-year plan, through the last day of the 2015 plan year), Employer did *not* eliminate or materially reduce the health coverage it offered as of Feb. 9, 2014.

(To document this, check all that apply and fill in the blanks.)

1) ____ As of Feb. 9, 2014, Employer did not offer any health coverage. OR

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2) ____ As of Feb. 9, 2014, Employer offered health coverage, and has continued to pay at least 95% of the dollar amount it paid on Feb. 9 for employee-only coverage, or at least the same percentage of the total cost if the cost increased after Feb. 9:

a. Cost of employee-only coverage on Feb. 9, 2014: _____

b. Dollar amount Employer paid on Feb. 9, 2014: _____

c. 95% of amount in b: $_____

d. Has employer paid at least the amount in c above?

___Yes, employer paid $_____ through end of 2015 or end of 2015 plan year.

___ No

e. Percentage of employee-only coverage Employer paid Feb. 9, 2014: _____

(Employer paid $_____ and total employee-only cost was $_____)

f. Cost of employee-only coverage has increased to $____/month.

g. Employer has continued to pay at least the percentage in e. above.

___Yes, percentage Employer pays is ____%

___No, percentage Employer pays is ____%.

3) ____ Between Feb. 9, 2014, and the last day of the 2015 plan year, Employer has <u>not</u> changed the benefits offered for employee-only coverage.

4) ___Between Feb. 9, 2014 and the last day of the 2015 plan year, Employer <u>did</u> change the benefits offered for employee-only coverage, and the new coverage provides at least minimum value after the change.

5) ___Employer did not reduce or narrow the class of employees (and dependents) who are eligible for coverage, between Feb. 9, 2014 and the last day of the 2015 plan year.

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