

# IRS Delays ACA Employer Mandate for Some Employers

By Jessica Summers

On February 10, 2014, the IRS and Department of Treasury issued its much anticipated final regulations on the implementation of the ACA's employer shared responsibility provision (a.k.a. the "employer mandate"). **To the surprise of most onlookers and the relief of many employers, the regulations include another delay of the mandate for employers with under 100 employees.**

As we previously reported, the employer mandate, which requires covered employers with 50 or more full-time or full-time equivalent employees to provide all full-time employees with health insurance or pay a penalty, was originally scheduled to go into effect on January 1, 2014. However, on July 2, 2013, the Obama Administration announced that the implementation of the employer mandate would be delayed until January 1, 2015. In making this decision, the Department of Treasury (DOT) cited concerns raised by employers and insurers about their ability to comply with the reporting requirements associated with the employer mandate. The DOT stated the hope that an additional year would allow the Administration more time to refine the reporting regulations and employers and insurers additional time to prepare for compliance. While the final rules released yesterday dealt with the implementation of the employer mandate, we are still awaiting final rules on the related reporting requirements.

The biggest news from the final employer mandate rules released yesterday is that they include an all out extension of the mandate for some employers and what might be called a transitional year for others. Specifically, the regulations provide that, for covered employers with under 100 full-time employees or full-time equivalents (i.e. employers with between 50 and 99 full-time employees and full-time equivalents), the employer mandate will not go into effect until January 1, 2016. For employers with over 100 full-time or full-time equivalents, the employer mandate will go into effect on January 1, 2015. However, in 2015 these employers will only be required to offer coverage to at least 70% (as opposed to 95%) of their full-time employees and will not be required to offer dependent coverage as long as they are taking steps for such coverage to commence in 2016.

The Final Regulations also include:

- Clarification about what constitutes a full-time employee, including defining exempted seasonal workers and addressing the handling of volunteers.
- Implementation of the "look back" method set forth in the proposed regulations for calculating whether employees working varying hours are considered full-time.
- Adopting the safe harbors included in the proposed regulations which would allow employers to use an employees' wages, an employees' hourly rate or the federal poverty level to verify that offered coverage is "affordable" for a particular employee.

These provisions and most of the other provisions in the final regulations conform closely to the proposed regulations and are relatively unsurprising.

For those employers with under 99 full-time employees or full-time equivalents, these regulations not only offer an additional year to comply but will also allow them to benefit from having other employers test the waters before them in 2015. For employers that fall into this category, it is important to keep in mind that, depending on the final regulations that are released with regards to the reporting requirements, they may still be required to file reports in 2015 even if they are not subject to the mandate.

For those employers with over 99 full-time employees or full-time equivalents, the regulations offer clarity on how the employer mandate will be implemented. Employers who fall into this category should promptly take serious steps to ensure that they understand and are prepared to comply with the regulations.