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Health Care Reform – The Employer Mandate: Treasury Issues Final Regulations

Yesterday, the Treasury Department issued long-awaited guidance on the application of the Employer Mandate under the Health Care Reform Act. Among other things, the new final regulations:

- **Delay Compliance for Employers with at Least 50 but Less Than 100 Full-Time Employees.** Allow employers with at least 50 but less than 100 full-time and full-time equivalent employees to delay compliance with the Employer Mandate without penalty until 2016. To qualify for the delay, the employer may not eliminate or materially reduce the health coverage, if any, offered to employees as of February 9, 2014.
- **Temporary Reduction in Percentage of Full-Time Employees that Must Be Covered.** Reduce the percentage of full-time employees that must be covered to avoid the “sledge hammer penalty” (*i.e.*, \$2,000 times the difference of (i) the number of all full-time employees, minus (ii) 30 (80 for 2015)) from 95% to 70%, but only for 2015. Please note that the “tack hammer penalty” will still apply to any of the 30% of full-time employees who are not covered and obtain a subsidy for coverage through an Exchange.
- **Service Counting Rules for Determining Employer Penalties.** Provide two measurement methods for determining full-time employee status for purposes of whether the sledge hammer or tack hammer penalties apply. Employers may apply: (i) a “monthly measurement method” (which determines full-time status by counting each employee’s hours of service each month), or (ii) a “look back measurement method” (which determines full-time status for a future period based upon each employee’s hours of service in a prior period). The final rules for the look back measurement method are similar to those in the proposed regulations we have discussed in the past. (See *the HRBenefit Authority* “Determining Full-Time Employee Status Under Health Care Reform.”)
- **Service Counting Rules for Determining Applicability.** Provide different service counting rules (including a transition rule) for determining whether a company employs a sufficient number of employees (50 or 100 full-time and full-time equivalent employees) to be subject to the Employer Mandate.
- **Special Rules for Certain Categories of Employees.** Provide special rules for determining the hours of service for various categories of employees, including adjunct faculty, airline employees and on-call employees.
- **Affordability of Employee Coverage.** Finalize the rules to determine whether group medical coverage is “affordable” for employees under three affordability safe harbors, similar to those under the proposed regulations.

The Treasury regulations are comprised of over 200 pages. We are in the process of studying these rules thoroughly and will provide you with more guidance, through newsletters and seminars, as quickly as possible.

In the meantime, here is a link to the *Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act*, which were issued by the Treasury Department along with the final regulations: <http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>

Contact Information. For more information from Mazursky Constantine, please contact [Don Mazursky](#) (404.888.8840), [Amy Heppner](#) (404.888.8825) or [Kelly Meyers](#) (404.888.8838). For more information from VCG Consultants, please contact [Leslie Schneider](#) (770.863.3617).

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999 Peachtree Street • Suite 1500 • Atlanta, GA 30309
www.mazconlaw.com • 404.888.8820
www.VCGConsultants.com • 770.863.3600