Non-Calendar Year Plan Threshold Test

The Treasury Department has announced new regulation and guidance, which make substantial changes to the existing 'Employer Mandate' rules for 2015. Several changes were announced, including methods for determining employer size and a reduction in mandate percentage for 2015.

Overview: percentage reduction

Employers with 100 or more employees will be required to offer affordable coverage to 70% of their full time employees in 2015; that percentage will rise to 95% in 2016. This is a significant change from the past rule in two ways. First, the previous regulation mandated 95% in 2015. Second the threshold percentages now apply only to full-time employees, excluding seasonal and part-time employees. It is important to note that if any employers fail to meet these mandates, they will be fined $2,000 per individual beyond the first 30 employees.

Defining Eligible Employees

The law says that anyone who works 30 hours or more is a full-time employee, and it compels many employers to offer affordable insurance to those workers and their dependents. It defines affordable as premiums of no more than 9.5 percent of an employee's income, and employers must pay for the equivalent of 60 percent of the actuarial value of a worker's coverage.

However, the new regulation does clarify that businesses may exempt seasonal workers—those employed less than six months—from their final count of insured employees. The regulation also notes that educators who have summers off are nonetheless to be treated as full-time workers entitled to be offered coverage. And finally, adjunct faculty members will be counted as working 2.25 hours for every hour in the classroom.

Threshold Test (with example)

In order to be eligible for these new rules (covering 70% instead of 95% of FTEs in 2015) an employer with a non-calendar year plan must meet the following threshold test:

- Employer maintained non-calendar year plans as of Dec. 27, 2012, and the plan year was not modified after Dec. 27, 2012, to begin at a later calendar date.
- Employers cannot reduce the size of their workforce or the overall hours of service of their employees during 2014, except for bona fide business reasons.
- Employers cannot eliminate or materially reduce the health coverage they offer to employees between now and 2016.
- Employers must timely certify to the Internal Revenue Service that they have met these requirements.

In addition to all of the above requirements, an employer with a non-calendar year plan must have also:

- had, as of any date in the 12 months ending on February 9, 2014, at lease one-third of its full-time employees covered under those non-calendar year plans, OR
- offered coverage under those plans to one-half or more of its full-time employees during the open enrollment period that ended most recently before February 9, 2014.

If employer meets one of these scenarios, then no penalty will be applied or payable for any month prior to the first day of the 2015 plan year with respect to full-time employees who:

1) are offered affordable coverage that provides minimum value no later than the first day of the 2015 plan year, AND
2) would not have been eligible for coverage under any group health plan maintained by the applicable large employer member as of February 9, 2014 that has a calendar year plan year.

Example:

Assume Employer X has 2,000 employees, of whom 500 are full-time employees and 1,500 are not full-time employees. Employer X maintained a plan with a July 1 plan year (Plan N) as of December 27, 2012. Plan N's plan year was not modified after December 27, 2012. Employer X does not offer any coverage other than Plan N.

For purposes of applying the new guidance, Employer X chooses December 1, 2013, as the date in the 12 months ending on February 9, 2014, to count the number of full-time employees it covered under Plan N. On December 1, 2013, Plan N covered 20 percent of Employer X's full-time employees (100 of 500). During the open enrollment period that ended most recently before February 9, 2014, Employer X offered coverage under Plan N to 60 percent of its full-time employees (300 of 500). As of the first day of the 2015 plan year (July 1, 2015), Employer X offers affordable coverage that provides Minimum Value, under Plan N, to all full-time employees. Employer X does not offer coverage to employees who are not full-time employees.

Under this scenario, under the new guidance, no penalty will be due with respect to Employer X's full-time employees for the period before July 1, 2015, because Employer X offered coverage to at least one half of its full-time employees during the open enrollment period that ended most recently before February 9, 2014, and the full-time employees of Employer X are offered affordable coverage that provides Minimum Value no later than the first day of the 2015 plan year (July 1, 2015).

Timing

As discussed above, employers who meet the threshold test, with plan years that do not start on January 1, will be able to begin compliance with employer responsibility at the start of their plan years in 2015 rather than on January 1, 2015.