February 12, 2014

Employer Shared Responsibility Provisions of Affordable Care Act Delayed for Certain Employers Until 2016

On Monday, February 10, the U.S. Department of the Treasury and the Internal Revenue Service issued final regulations that will delay the effective date of the Employer Shared Responsibility provisions of the Affordable Care Act (ACA) for certain employers until 2016.

Generally, as part of the ACA, certain employers will face a "pay or play" penalty if they either fail to offer coverage to their employees or offer coverage that is unaffordable or does not meet certain thresholds.

Two potential penalties may apply to employers that have at least 50 full-time employees (or full-time equivalents). The first penalty applies if the employer fails to offer minimum essential health coverage to at least 95 percent of its full-time employees and their dependents and if at least one full-time employee receives a premium tax credit on a public healthcare exchange. This penalty is equal to $2,000 for each full-time employee, disregarding the first 30 full-time employees.

The second penalty applies if the employer offers coverage to at least 95 percent of its full-time employees but at least one full-time employee receives a premium tax credit on a public healthcare exchange because either the employer did not provide coverage to that employee, the coverage offered does not meet the minimum value requirement (i.e., it does not cover at least 60 percent of the total allowed cost of benefits expected to be incurred under the plan) or the cost is unaffordable (i.e., the cost of coverage exceeds 9.5 percent of the employee's household income). This penalty is equal to $3,000 for each full-time employee who receives a premium tax credit on a public healthcare exchange.

Under the new final regulations, employers with at least 50 but fewer than 100 full-time employees will not be subject to the Employer Shared Responsibility penalties for 2015. An employer will not qualify for the transition relief if it reduces the size of its workforce or the overall hours of its employees in order to qualify for the relief, or if the employer eliminates or materially reduces the healthcare coverage it provides between February 9, 2014, and December 31, 2015. For employers whose plans are not administered on a calendar-year basis, the relief applies to the 2015 plan year, including months for the 2015 plan year that fall in 2016.

In addition, an employer with 100 or more full-time employees will not be subject to the Employer Shared Responsibility *coverage* penalty for 2015 if the employer offers coverage to at least 70 percent of its full-time employees. This relief, however, does not affect the minimum value/affordability requirement. Therefore, an employer will still be subject to a penalty if either one full-time employee receives a premium tax credit, the coverage does not meet the minimum value requirement or the cost is unaffordable (as described above).

If you have any questions about the Affordable Care Act or any other employee benefits or executive compensation matter, please contact a member of Day Pitney's Employee Benefits and Executive Compensation group.