IRS issues final ACA employer mandate regulations and eases 2015 requirements

Yesterday the IRS released final regulations on the employer shared responsibility requirements – commonly called the employer mandate. The guidance provides important transition relief for 2015 that will make it more likely that employers will avoid any penalties and addresses many of the open issues in the proposed regulations. Employers now have the guidance required to finalize their 2015 compliance strategy.

Background

The shared responsibility requirement is one of the most significant provisions that employers need to address under the Affordable Care Act (ACA). Starting in 2015, large employers must offer full-time employees health coverage that is affordable and provides minimum value or pay a penalty if at least one full-time employee enrolls in marketplace coverage and receives a premium tax credit. The IRS published proposed regulations on the requirement in January 2013. (See our January 30, 2013 For Your Information.) On July 2, 2013 the Department of the Treasury announced a one-year delay in the employer shared responsibility requirement. (See our July 2, 2013 For Your Information.)

Yesterday, the IRS issued final regulations as well as a press release, fact sheet and a series of Questions and Answers on this mandate. The guidance provides important changes and transition rules that will be of value to many employers in complying with these requirements in 2015.

Below is a high-level summary of the most significant areas in the guidance; a more detailed analysis of the requirements will be released at a later date.

Buck webinars

Buck Consultants is sponsoring a webinar — Legislative outlook 2014 — tomorrow, Wednesday, February 12 at 1:00 Eastern. This webinar will touch on these final ACA regulations, as well as the legislative landscape for 2014. Registration for this webinar is available here.

Also, on February 27 Buck will sponsor a webinar on the final shared responsibility regulations, The heat is on: Complying with the ACA’s employer mandate. Registration for this webinar is available here.
2015 Transition provisions

Under the ACA, large employers (i.e., employers that employed on average at least 50 full-time employees on business days during the preceding calendar year) may be subject to penalties if they do not satisfy the shared responsibility requirements. Although the mandate becomes effective in 2015, the final regulations exempt employers with 50 to 99 employees from their application until 2016. Thus, only employers with 100 or more employees are treated as “large employers” in 2015.

The proposed regulations required large employers to offer coverage to at least 95% of their full-time employees in order to avoid a penalty. Under the final regulations, this requirement has been reduced to 70% for the 2015 plan year, increasing to 95% for 2016 and later years.

**Buck comment.** The relaxation of this requirement to 70% for the 2015 plan year will greatly ease the compliance efforts for many large employers in 2015, and provide them with additional time to comply with the more stringent requirements that will apply in 2016 and later.

Dependent coverage

To avoid the penalty, coverage must be offered to dependents — defined under the proposed regulations as children, including stepchildren, adopted children, and foster children, but not including the spouse. The final regulations exclude both stepchildren and foster children from the definition of dependent for the shared responsibility penalty. For employers that do not currently offer dependent coverage, or do not cover all the required categories of children, such as adopted children, the penalty will not apply if an employer takes steps during the 2015 plan year toward offering dependent coverage in 2016.

Other transition relief

The final regulations provide additional transition relief for 2015 similar to what was included in the proposed regulations that would have been effective for 2014:

**Six-month measurement period.** In determining full-time employees for 2015, employers can use a six-month measurement period, even with a twelve-month stability period, on a one-time basis.

**Non-calendar year plans.** Employers with non-calendar year plan years will not be required to comply with the shared responsibility requirement until the beginning of the 2015 plan year (i.e., the plan year starting in 2015), rather than on January 1, 2015 if they satisfied certain conditions on February 9, 2014, the day before the final regulations were issued. To be eligible for the transition relief, the coverage must generally be offered to full-time employees on the first day of the 2015 plan year and it must be affordable and provide minimum value.

**Definition of large employer.** Employers can determine if they have 100 or more full-time employees or full-time equivalent employees — and are therefore subject to the employer shared responsibility requirement in 2015 — by using a period of at least six consecutive months, rather than a full year.
Identifying full-time employees

The final regulations provide two methods for identifying full-time employees:

**Look-back measurement method.** This method largely follows the approach included in the proposed regulations. Under this method, the status of variable hour employees is determined by using a look-back measurement period and a subsequent stability period.

**Monthly measurement method.** Under the monthly measurement method, employees will be identified as full-time employees for initial eligibility using their hours of service for each calendar month and not based on averaging over a prior measurement period. The regulations provide additional details on this method.

Although an employer generally must use the same measurement method for all employees, it may apply either the look-back measurement method or monthly measurement method to the following categories of employees:

- Each group of collectively bargained employees covered by a separate bargaining agreement
- Collectively bargained and non-collectively bargained employees
- Salaried and hourly employees
- Employees whose primary places of employment are in different states

**Buck comment.** The regulations note that only the above categories are permitted, and that an employer cannot use the look-back measurement method for variable hour employees and the monthly measurement method for employees with more predictable hours of service. This limits the flexibility of these methods.

**Seasonal employees**

The proposed regulations did not include a definition of seasonal employee. The final regulations provide that a seasonal employee means an employee in a position for which the customary annual employment is six months or less. The preamble explains that "customary" means that by the nature of the position an employee in this position typically works for a period of six months or less, and that period should begin each calendar year in approximately the same part of the year, such as summer or winter.

**Educational institutions**

Because of the nature of their workforce and the academic year, educational institutions have a number of special issues that are addressed in the final regulations:

**Educational employees.** Teachers and other educational employees will not be treated as part-time simply because their school is closed or operates on a limited schedule during the summer. This is consistent with the proposed regulations.

**Adjunct faculty.** Employers are required to use a reasonable method for crediting hours of service for adjunct faculty that reflects both classroom and non-classroom time. The final regulations provide a “bright line” method allowing credit for (1) 2¼ hours of service per week for each hour of teaching or classroom time, plus (2) an hour of service per week for each additional hour outside the classroom the faculty member spends performing required duties.
(such as office hours or attendance at faculty meetings). This method can be relied upon at least through the end of 2015. The guidance also confirms that employers can use other approaches until final guidance is issued.

**Student work-study programs.** While the final regulations do not include a general exception for student employees, the regulations do provide that service performed by students under federal or state-sponsored work-study programs will not be counted in determining if the students are full-time employees. However, service performed under an internship or externship program would count as hours of service for the outside employer and not the educational institution.

**In closing**

With the release of the final regulations, employers now have the guidance required to finalize their compliance strategy for 2015. As the final regulations provide important transition relief and clarifications, employers should develop a compliance strategy as soon as possible.