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Empoyer Mandate Delay - Further Analysis

Late on Tuesday evening, word started trickling out that Treasury would delay the implementation of the employer mandate until 2015. Many large employers have already started making changes to their systems and have already adopted proposed changes to eligibility in order to satisfy the employer mandate requirements. So, in some respects, giving a one-year delay now is similar to closing the floodgates after the flood has already occurred.

Some have speculated that the delay is to improve the chances of Congressional democrats to win re-election in November 2014. Others have speculated that the delay was caused by all the distractions at Treasury and IRS in recent months. The truth is probably more in the middle.

Within the next week, Treasury indicates that it will issue official guidance to insurers, self-insuring employers and other parties that provide health coverage, as to what the one-year delay will mean. However, even before the official guidance is released, based on Treasury's own admissions and related news reports, it's clear that the employer mandate under Code Section 4980H will not apply until 2015.

What Does the One-Year Delay Mean?

If the official guidance comes out as expected, employers will no longer have to comply with the employer mandate for 2014. This means that an employer would not have to change eligibility requirements or computer systems to satisfy the requirement that an employer offer coverage to those working 30 or more hours per week. Further, the coverage that is offered for 2014, does not have to meet minimum value requirements or affordability requirements. Employers that have already adopted changes to satisfy the employer mandate requirements for 2014 will need to decide whether to reverse those changes or continue to implement the changes. Of course, if an employer decides to continue to implement for 2014, it would not be penalized for less than full implementation. Further guidance on these issues is expected to be addressed in the official Treasury guidance.

What Is Not Affected by the Delay?

The employer mandate is just one piece of the 2014 puzzle. All other requirements continue to apply in 2014. Although now that the employer mandate is delayed, it does make the prospect of additional delays for other requirements more likely. Only time will tell as to whether other requirements will be delayed as well. As it stands today, the following requirements are still effective for 2014 –

- Public Exchanges are expected to open October 1, 2013 for 2014 enrollments.
- Premium tax credits will be available for purchasing Exchange coverage.
- The individual mandate to have coverage will apply.
- Employers must distribute Exchange Notices by October 1, 2013, and thereafter for new hires.
- Final wellness program regulations apply.

• The Affordable Care Act benefit mandates continue to apply for 2014 coverage, including –

o Changes in preventive care requirements.

o Prohibition on more than 90-day waiting periods.

o Coverage for clinical trials.

o Whistleblower provisions.

o Prohibition on pre-existing condition exclusions.

o Maximum cost sharing limits.

So, it's good that Treasury will issue a one-year reprieve on the employer mandate requirements, but there still are many more changes for employers and plan sponsors to process for 2014. We will issue additional updates as official guidance is released.