

HEALTH CARE REFORM: EMPLOYER SHARED RESPONSIBILITY TRANSITION RELIEF

Under the Employer Shared Responsibility provisions of section 4980H of the Internal Revenue Code (IRC), a large employer may be subject to a penalty if it fails to offer to its full-time employees, and their dependents, minimum essential coverage that is affordable and provides minimum value. The effective date of the penalties, originally scheduled for January 1, 2014, was postponed to January 1, 2015. On February 10, 2014, the U.S. Treasury released final regulations for IRC section 4980H, which includes some transitional relief for 2015. This *Briefing* describes the new transition relief available to employers.

The Employer Shared Responsibility provisions apply to large employers (i.e., generally 50 or more “full-time employees” for the preceding calendar year). The final regulations provide significant transition relief for large employers with 50 to 99 full-time employees. These eligible employers will not be subject to any penalties under IRC section 4980H(a) or (b) for 2015. Additionally, large employers with 100 or more full-time employees will not be subject to a penalty under section 4980H(a) for 2015 if the employer offers minimum essential coverage to at least 70 percent of its full-time employees.

LARGE EMPLOYERS WITH 50 TO 99 FULL-TIME EMPLOYEES

For employers with 50 to 99 full-time employees, including full-time equivalent employees (FTE), the final regulations provide transition relief from the penalties under both section 4980H(a) and (b). The relief applies to both calendar and off-calendar year plans beginning on or after January 1, 2015 provided that the employer does not modify its plan year after February 9, 2014 to start at a later date. Eligible employers will not be subject to a penalty under either section 4980H(a) or (b) for any month during 2015, including any months in 2016 that are part of the 2015 plan year. In order to be eligible, an employer must:

- Employ on average at least 50 full-time employees, including FTEs, but less than 100 during 2014;
- Not reduce the size of its workforce or overall hours of service from February 9, 2014 through December 31, 2014 in order to satisfy the 50 to 99 full-time employee limit unless done for bona fide business reasons, such as the sale of a division, changes in the economic marketplace in which the employer operates, termination of employees for poor performance, or other similar business reasons; and,
- Not eliminate or materially reduce the health coverage it offered as of February 9, 2014 for the duration of the “coverage maintenance period.” For calendar year plans, the coverage maintenance period is February 9, 2014 through December 31, 2014. For non-calendar year plans, the coverage maintenance period is February 9, 2014 through the last day of the 2015 plan year.

An employer will not be treated as eliminating or materially reducing health coverage if:

- During the coverage maintenance period, the employer continues to offer each eligible employee an employer contribution for self-only coverage that is either: (1) at least 95% of the dollar amount of

the contribution toward such coverage that the employer was offering on February 9, 2014; or, (2) is the same (or a higher) percentage of the cost of coverage that the employer was contributing on February 9, 2014.

- In the event there is a change in benefits under the self-only coverage offered, that coverage provides minimum value after the change in benefits; and
- The employer does not alter the terms of its group health plans to narrow or reduce the class or classes of employees (or the employees' dependents) to whom coverage under those plans was offered on February 9, 2014.

An employer utilizing this transition relief will need to certify that it meets the above requirements on a prescribed form that has yet to be identified. The IRS anticipates that employers will provide this certification along with the transmittal form that is required to be filed as part of the reporting requirements under IRC section 6056.

LARGE EMPLOYERS WITH 100 OR MORE FULL-TIME EMPLOYEES

For employers with 100 or more full-time employees, including FTEs, the final regulations provide limited transition relief from the penalties under IRC section 4980H(a). The relief applies to both calendar and off-calendar year plans beginning on or after January 1, 2015 provided that the employer does not modify its plan year after February 9, 2014 to start at a later date.

Under the transition relief, a large employer offering coverage to at least 70 percent of its full-time employees will not be subject to a penalty under IRC section 4980H(a) for each month of 2015, including any months in 2016 that are part of the 2015 plan year. This is a notable change for non-calendar year plans, which will need to come into compliance with the 95 percent requirement for plan years beginning in 2016. However, this relief is applicable only to the penalties under IRC section 4980H(a). Large employers will continue to be subject to the penalties under IRC section 4980H(b) starting on January 1, 2015.

Note, the transition relief for large employers with 50 to 99 and 100 or more full-time employees is applicable only to the imposition of penalties under section 4980H. All large employers will still be required to report in 2016 under IRC section 6056 about the coverage offered to their workforce for the 2015 calendar year.

Please contact your Keenan Account Manager for questions regarding this *Briefing* or if you require any additional information regarding the Affordable Care Act.

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