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Health Care Reform Employer Mandate Delayed; DOMA Struck Down - What Now For Employers?

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Health Care Reform Employer Mandate and Reporting Provisions Delayed until 2015

The U.S. Department of the Treasury unexpectedly announced on July 2, 2013 the delay of the employer shared responsibility 'pay or play' provisions of the Patient Protection and Affordable Care Act until 2015. Our May 6, 2013 alert discussed these rules, which require large employers to offer full-time employees affordable health coverage that provides "minimum value" or pay a penalty. In addition, the announcement delays until 2015 the related mandatory employer and insurer information reporting requirements, which include reporting the identify of full-time employees and the months of provided health coverage. Treasury indicated one of the reasons for the delay is a desire to simplify the reporting requirements, so additional guidance on these provisions is expected. IRS Notice 2013-45 issued on July 9, 2013 confirms the announcement and indicates no employer shared responsibility penalties will be assessed for 2014, but the IRS encourages employers to prepare for 2015 by voluntarily complying with the mandate and reporting requirements.

Not affected by this announcement are employer deadlines for other healthcare reform provisions, such as the Patient Centered Outcomes Research Institute (PCORI) fees (due beginning July 31, 2013 – see our June 11, 2013 alert), required coverage and plan design changes set to take effect in 2014, including the limitation on eligibility waiting periods discussed in our April 15, 2013 alert and the elimination of pre-existing condition exclusions, the mandatory employer notice to employees regarding public health insurance exchanges (by October 1, 2013), and access by employees who are not otherwise eligible for minimum essential coverage to a premium tax credit when enrolling in qualified coverage through a public healthcare exchange. However, this delay raises new questions about how certain parts of health care reform will be implemented, and political pressure already is building for delays or changes to additional health care reform provisions, so watch for future developments.

Section 3 of the Defense of Marriage Act (DOMA) Ruled Unconstitutional

While the health care reform delay gives human resources managers welcomed breathing room to consider issues surrounding implementation of the employer mandate and related reporting requirements, the U.S. Supreme Court's decision in *United States v. Windsor* presents a new and

complicated patchwork of rules that likely will challenge plan administrators for years to come.

The *Windsor* decision requires the recognition of a same-sex marriage under applicable state law for federal tax and ERISA purposes, but the Court did not strike down Section 2 of DOMA, which allows states to disregard same-sex marriages legally entered into in other states. For employers in North Carolina and other states that do not sanction or recognize same-sex marriage, the key question raised by *Windsor* is whether spousal benefits now must be extended to an employee and same-sex spouse legally married in another state, or to an employee and same-sex spouse who live in a state that recognizes same-sex marriage. Unfortunately, for now, the answer to this question may vary depending on what type of plan is involved, the specific plan provisions, where the employee resides, and the outcome of future guidance and litigation. It is clear, however, that domestic partnerships and civil unions do not have the same status under the *Windsor* decision as a legal same-sex marriage under applicable state law, so at least for now employers will still be required to report imputed income for benefits provided under domestic partner programs to participants who are not tax dependents of the employee.

Employers should wait for guidance from the appropriate government agencies on how to implement the *Windsor* decision, but should immediately begin reviewing plan document provisions that may be impacted by the decision and expected future guidance. Employers also should work closely with employee benefits legal counsel before making changes to plans or in responding to inquiries or benefit claims involving employees with a same-sex spouse or partner.

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