



BENEFIT NEWS BRIEFS

IRS Releases FAQs on Automatic Enrollment, Employer Shared Responsibility, and Waiting Periods under the ACA

In the continuing rollout of *Affordable Care Act (ACA)* guidance, the IRS released *Notice 2012-17, Frequently-Asked-Questions From Employers Regarding Automatic Enrollment, Employer Shared Responsibility, And Waiting Periods*. Originally set to become effective in 2014, compliance with the “automatic enrollment” section of the ACA reforms is not required until final regulations are issued. The other reforms are currently scheduled to begin in 2014. The *Notice* is available at the IRS website at: <http://www.irs.gov/pub/irs-drop/n-12-17.pdf>.

Many provisions of the ACA that are to become effective beginning in 2014 are designed to expand access to affordable health coverage to individuals. These include provisions for *automatic enrollment* of full-time employees in an employer’s health plan, *shared responsibility* of employers regarding health coverage, coverage to be offered through State-based Affordable Insurance Exchanges (Exchanges), premium tax credits to assist individuals in purchasing coverage through Exchanges, and *other related provisions*. Since our focus is generally on what health care reform means to multiemployer health plans, we do not always report on some of the various other reforms measures that do not directly affect health plans.

However, due to the connection between these employer rules and *plan* rules, we wanted to draw attention to this guidance.

The “automatic enrollment” and “employer shared responsibility” rules affect employer’s duties while the “90-day limitation on waiting periods” affects group health plan and group health insurance issuer duties. If an employer participating in a multiemployer health plan has less than 50 employees, they will not be impacted by the “employer” rules.

The *Notice* sets out seven *Frequently-Asked-Questions (FAQs)* and outlines various approaches being considered in future regulations or other guidance. Comments are due by April 9, 2012 via the email/mailling addresses listed on page 8 of the *Notice*.

For a specially prepared version of the *Notice* with a Table of Contents, "[click here.](#)" See <http://www.irs.gov/newsroom/article/0,,id=220809,00.html?portlet=6> for other IRS ACA guidance. DOL guidance titled Technical Release 2012-12 that corresponds to IRS *Notice* 2012-17 is at: <http://www.dol.gov/ebsa/newsroom/tr12-01.html>. The following discussion is drawn from the *Notice*.

BACKGROUND

The FAQs provide only statements about guidance the IRS and other agencies intend to offer, but do not contain actual guidance. As a result, the details on how these aspects of the ACA reforms will work are unclear or unknown.

Automatic Enrollment

The ACA amended several parts of federal law and added Section 18A to the *Fair Labor Standards Act (FLSA)*. This Section directs an employer that has *more than 200 full-time employees*, to automatically enroll new full-time employees in one of the employer's health benefits plans (*subject to any waiting period authorized by law*). The law also requires adequate notice and opportunity for an employee to opt out of any coverage in which the employee was automatically enrolled.

Employer Shared Responsibility

The employer shared responsibility provisions require an employer with 50 or more full-time employees to be subject to a monetary assessment if any full-time employee is certified to receive: (1) an applicable premium tax credit or (2) cost-sharing reduction payment. A "*full-time employee*" is an employee who is employed on average at least 30 hours per week. Generally, this credit or reduction payment could occur where:

- The employer does not offer to its full-time employees (and their dependents) the opportunity to enroll in *minimum essential coverage* under an eligible employer-sponsored plan; or
- The employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan that either is *unaffordable* relative to an employee's household income or does not provide *minimum value*.

90-Day Limitation on Waiting Periods

For plan years beginning on or after January 1, 2014, the ACA also added a requirement that a group health plan or group health insurance issuer shall not apply any "*waiting period*" that exceeds 90 days. A "*waiting period*" is defined as the period that must pass before the individual is eligible to be covered for benefits.

Of interest to multiemployer health plans is the request for comments on how the 90-day waiting period would apply to plans that credit hours of service from multiple employers and plans that use hours banks.

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