

Employer Mandate Delayed—Employers Get Welcome Relief from Penalties Until 2015, but Many Questions Remain

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In reaction to employers' concerns about the many difficulties posed in efforts to comply with the Employer Mandate provisions of the Affordable Care Act ("ACA"), the Obama administration ("Administration") announced late yesterday that it is delaying the implementation of the penalty provisions and other aspects of the shared responsibility regulations until 2015. While the delay may have been to accommodate stakeholder requests, the delay also may have accommodated the Administration in connection with its readiness to implement the Employer Mandate. This delay could be a precursor to other implementation delays as the Administration seeks to make the ACA's implementation successful, especially in light of intense scrutiny as to implementation and an inability to amend the law in Congress.

Employers and business groups have lobbied the Administration heavily in recent months, emphasizing the cost and administrative burdens that compliance with the shared responsibility regulations will place on them. Many union leaders who supported passage of the ACA have also raised a variety of concerns with its implementation. Significantly, employers have struggled to analyze the number of employees who work 30 hours or more a week and the costs associated with providing such employees with affordable coverage. In addition, new recordkeeping and reporting requirements, for which little guidance has been released, left employers with many unanswered questions and made it difficult to institute efficient compliance systems.

Mark J. Mazur, Assistant Secretary for Tax Policy at the U.S. Department of the Treasury ("Treasury"), indicated in [a statement on Treasury's website](#) that the delay "is designed to meet two goals. First, it will allow us to consider ways to simplify the new reporting requirements consistent with the law. Second, it will provide time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees." Notably, at this time, it does not appear that the implementation of the individual mandate, requiring American workers to purchase health insurance or pay a tax, has been delayed—nor is the ACA otherwise generally stayed.

Valerie B. Jarrett, Senior Advisor to President Barack Obama, further [explained on The White House Blog](#): “As we implement this law, we have and will continue to make changes as needed.” She went on to state that:

In our ongoing discussions with businesses we have heard that you need the time to get this right. We are listening. So in response to your concerns, we are making two changes.

First, we are cutting red tape and simplifying the reporting process. We have heard the concern that the reporting called for under the law about each worker’s access to and enrollment in health insurance requires new data collection systems and coordination. So we plan to re-vamp and simplify the reporting process. Some of this detailed reporting may be unnecessary for businesses that more than meet the minimum standards in the law. We will convene employers, insurers, and experts to propose a smarter system and, in the interim, suspend reporting for 2014.

Second, we are giving businesses more time to comply. As we make these changes, we believe we need to give employers more time to comply with the new rules. Since employer responsibility payments can only be assessed based on this new reporting, payments won’t be collected for 2014. This allows employers the time to test the new reporting systems and make any necessary adaptations to their health benefits while staying the course toward making health coverage more affordable and accessible for their workers.

Just like our effort to turn the 21 page application for health insurance into a 3 page application, we are working hard to adapt and to be flexible in employer and insurer reporting as we implement the law.

The government plans to issue formal guidance detailing this transition period in the coming weeks. In addition, as noted in [Mr. Mazur’s statement](#), by the end of the summer, Treasury expects to publish proposed rules for implementing the ACA’s information reporting requirements (under Section 6055) by insurers, self-insuring employers, and other parties providing health coverage. The Administration has stated that it will continue to invite business and employer groups to comment and discuss how the ACA and Employer Mandate will impact their operations and workforces.

While employers wait for the guidance, this news provides some welcome relief and breathing room to allow employers to continue to work with their legal counsel and benefits experts to evaluate how best to comply with the ACA’s myriad regulations. Employers would also be well served to use this time to work with business groups to make their voices heard to government regulators over the next 18 months with the mission of achieving responsible and effective health reform.

Employers should also keep in mind that other aspects of the ACA remain in effect despite delay of the Employer Mandate. For example, benefit design issues remain important. Employers using or considering wellness programs will want to be cognizant of, and take advantage of, the final wellness rule. In addition, non-discrimination requirements and the ACA’s broad whistleblower provisions remain in effect, as does

the Cadillac tax on January 1, 2018. Prudent employers will realize that this welcome development should not arrest their plans to control health care costs, provide affordable coverage, and move forward with compliance activities otherwise required by the ACA.

As guidance is forthcoming and regulations are issued, we will continue to advise employers of all sizes in all industries on how to implement the ACA in a meaningful and cost-effective fashion that best serves their unique needs.

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