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## treasury delays implementation of key aspect of "obamacare" by a year

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*MSK Client Alert*

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On July 2, 2013, the Department of the Treasury announced that the penalties for "applicable large employers" who fail to offer health coverage to certain eligible employees will not go into effect until 2015. These rules were previously scheduled to go into effect in 2014 and, as such, employers will now have an additional year to prepare to either provide health-care coverage to employees or pay penalties under the Affordable Care Act ("ACA"). Under ACA, an "applicable large employer" is one that employed an average of at least 50 full-time employees on business days during the preceding calendar year. The parent-subsidiary and brother-sister controlled-group rules of the Internal Revenue Code apply in making this determination. Thus, for example, in determining whether the 50-employee test has been met, all subsidiaries that are at least 80 percent owned, directly or indirectly, by the parent corporation will be treated as a single employer with the parent corporation. Also, two part-time employees who work an average of at least 15 hours a week are considered a single full-time employee for purposes of making this determination.

Under the delayed rules, employers that are treated as "applicable large employers" will have until 2015 to offer employees health-plan coverage that complies with ACA requirements or otherwise become subject to one of two types of penalties under the Internal Revenue Code, referred to as "assessable payments."

Under one type of assessable payment, if an "applicable large employer" offers health coverage to all employees who work 30 or more hours a week and their dependents, but the coverage does not qualify as "minimum essential coverage" or the employer offers coverage that is not "affordable" or does not provide "minimum value" and at least one employee enrolls in a plan offered through a state health insurance exchange for which a premium tax credit or cost-sharing reduction is allowed, then the employer will be subject to an "assessable payment" of up to \$3,000 for each affected employee per year. Compliance is determined on a monthly basis with a \$250 assessable payment

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(one-twelfth of \$3,000) due for each month for which the affected employee is entitled to a premium tax credit or cost-sharing reduction as a result of the purchase of coverage on the exchange. Not all employees will be eligible for the premium tax credit or cost sharing for purchase of this insurance. Only employees earning less than four times the federal poverty limit will be entitled to these benefits. However, employers will not have to make this determination. If the IRS determines that the employee is entitled to these benefits, it will issue the assessment to the employer. This assessable payment is determined only with respect to those employees who purchase the insurance on the exchange and are eligible for the premium tax assistance or cost sharing.

The other type of assessable payment applies if the applicable large employer fails to offer minimum essential coverage to 95 percent of its employees who work 30 or more hours per week and their dependents, regardless of whether it is "affordable" or provides "minimum value" and at least one employee purchases coverage through a state health insurance exchange for which a premium tax credit or cost-sharing reduction is allowed. Under these rules, the employer can be assessed a penalty equal to \$2,000 per year, but multiplied by the number of full-time employees employed by the employer reduced by 30.

Other requirements of the ACA are not delayed. The requirement that waiting periods not exceed 90 days is still scheduled to go into effect on January 1, 2014, and employers are still required to provide to employees the notice of marketplace coverage options by October 1, 2013.