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GOVERNMENT ISSUES FINAL REGULATIONS ON EMPLOYER SHARED RESPONSIBILITY ("PLAY OR PAY") REGULATIONS

The U.S. Treasury Department released the [final regulations](#) implementing the employer shared responsibility penalty provisions of the 2010 health care reform law on February 10, 2014. In many ways, the final regulations resemble the proposed regulations issued over a year ago, but there are several - mostly welcome - changes and transition provisions for employers.

Phased-in enforcement. The penalty provisions were to apply, beginning this year, to employers with 50 or more full-time equivalent employees. Such "large" employers are subject to a tax penalty under Internal Revenue Code section 4980H for each month in which they fail to offer affordable, minimum value coverage to 95% of full-time employees (and their children up to age 26). The Obama administration announced last summer that it would delay enforcement of the penalty provision until 2015 for all large employers. **These final regulations further delay the penalty provision until 2016 for large employers with fewer than 100 full-time employees. And, for a large employer with 100 or more full-time employees, penalties can be avoided in 2015 as long as the employer offers affordable minimum value coverage to at least 70% (not 95%) of its full-time employees.**

Identifying full-time employees. The final regulations retain the safe harbor look-back measurement/stability period method for determining full-time status, but provide a number of general exemptions to who must be counted as a full-time employee including most volunteers of government or tax-exempt entities and seasonal employees customarily working less

than six months of the year. In addition to the exemptions, the final regulations include several clarifying provisions for counting hours of other categories of employees (e.g., teachers, work-study students, and adjunct professors).

Transition relief of proposed rules extended. Certain transition relief that would have been available for 2014 is extended under the final regulations. For example, an employer can use a six-month period in 2014 (instead of the whole year) to determine whether it has the threshold 100 full-time equivalent employees for purposes of the 2015 penalty. Also, an employer with a fiscal year plan generally will not be subject to the penalty provisions until the first day of its 2015 plan year.

As with the proposed regulations, the devil is in the details regarding the special exceptions and transition rules and a full treatment of all those details is well beyond the scope of this alert. We will be reviewing these in more detail in the days ahead.

JACKSON LEWIS, P.C.

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