



NEW 90-DAY WAITING PERIOD RULE FOR GROUP HEALTH PLANS UNDER HEALTH CARE REFORM

The Patient Protection and Affordable Care Act provides that group health plans may not apply a waiting period of more than 90 days for plan years beginning after December 31, 2013 (January 1, 2014 for calendar year plans). IRS [Notice 2012-59](#), which was issued earlier this year, provides guidance on how employers should apply this rule.

In general, the aim of the rule is to ensure that otherwise eligible individuals do not have to wait more than 90 days to begin coverage. Under the Notice, a “waiting period” is defined as the period of time that an eligible employee (or dependent) must wait to begin coverage under a plan. The Notice provides that in applying this term:

- Eligibility conditions based solely on the lapse of time will generally be treated as a “waiting period.”
 - Note, though, that a plan may impose a cumulative hours of service requirement for eligibility purposes in certain circumstances (see discussion below for more details).
- Bona fide job classifications, full-time/part-time status, attainment of seniority status (under a collective bargaining agreement) and other legitimate eligibility standards will not be treated as a waiting period (unless designed to avoid compliance with the 90-day rule).

The Notice also provides the following additional guidance on determining plan eligibility:

- While a plan may (as noted above) generally impose an aggregate hours of service threshold for eligibility purposes, the requirement cannot exceed 1,200 hours. In addition, eligible individuals must be allowed to enroll within 90 days of the date the employee first meets the service requirement.
- In the case of new employees, an employer may use a period of up to 13 months to determine whether the employee is eligible where –
 - under the terms of the plan, an employee must regularly work a specified number of hours to be eligible (e.g., work 30 hours per week), and
 - it cannot be determined whether the new hire is “reasonably expected” to meet the plan’s hours requirement at the time of hire.¹

¹ This comes from Notice 2012-58, which provides “safe harbor” rules for determining full-time status for purposes of the employer contribution mandate. The



Under this rule, if the new employee satisfies the hours requirement, enrollment must occur by the earlier of – (i) the 91st day following the close of the measurement period or (ii) the first day of the month following the 13th month anniversary of the employee’s hire date.

Note that because the maximum waiting period is 90 days, care must be taken in continuing any practice of enrolling newly eligible individuals as of the first day of a later premium payment period (e.g., the next month or pay period). For example, a plan under which newly eligible individuals begin participation on the first day of the month following a designated waiting period should use a waiting period of no more than 60 days.

One last point — keep in mind that this guidance is only temporary, as the Notice provides that it can only be relied on through 2014. Thus, it is possible that changes could be made to these rules as early as 2015.

rules involved here, which relate to “variable hour” employees, are discussed in more detail in a [November 19, 2102 blog entry](#).