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For plan years beginning on or after January 1, 2014, the Affordable Care Act prohibits a group health plan (both grandfathered and non-grandfathered) or insurance carrier from imposing a waiting period that exceeds 90 days. The IRS, DOL and HHS (the Departments) jointly released temporary guidance regarding the 90-day waiting period limitation. The guidance explains how the maximum waiting period is affected by various types of eligibility conditions.

The guidance defines a waiting period as “the period that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective.” For this purpose, being eligible for coverage means having met the plan’s substantive eligibility conditions, such as being in an eligible job classification. The Departments note that the ACA does not require employers to offer coverage to any particular employee or class of employees, including part-time employees. It merely prevents an otherwise eligible employee, or dependent, from having to wait more than 90 days before coverage becomes effective. It is important to note, however, that beginning in 2014, employers with 50 or more employees may incur a penalty under the employer mandate if they don’t offer coverage, or if they offer coverage that is expensive and a full-time employee receives subsidized coverage through the Exchange.

The guidance clarifies that eligibility conditions that are based solely on the lapse of a time period are permissible

for not more than 90 days. Other conditions for eligibility are generally permissible as long as the condition is not designed to avoid compliance with the 90-day requirement. The guidance also clarifies that a plan or carrier will not be considered to have violated this provision simply because an employee takes additional time to elect coverage. If, under the terms of a plan, an employee may elect coverage that would begin on a date that does not exceed the 90-day waiting period limitation, the limitation is considered satisfied.

For newly hired employees, a plan may take a reasonable period of time to determine whether the employee meets the plan’s eligibility conditions, including a measurement period that is consistent with the timeframe permitted for such determinations under the employer penalty provisions, even if the employer is not considered a large employer subject to the employer penalty. In general, this reasonable period will not be considered to be designed to avoid compliance with the 90-day waiting period limitation if the coverage is made effective no later than 13 months from the employee’s start date or, if the employee’s start date is not the first day of a calendar month, the time remaining until the first day of the next calendar month.

Although this guidance is temporary, it can be relied upon at least through the end of 2014. Additional guidance will likely be issued and we expect it to provide adequate time to comply with any additional or modified requirements.