

Public Health Service Act (PHS Act) section 2708 states that "[a] group health plan and a health insurance issuer offering group or individual health insurance coverage shall not apply any waiting period that exceeds 90 days." DOL Technical Release No. 2012-02¹ provides temporary guidance regarding this 90-day waiting period limitation. The guidance will remain in effect at least through the end of 2014.

Waiting Period

In accordance with PHS Act § 2704(b)(4), pertaining to a group health plan and an individual who is a potential participant or beneficiary in the plan, the term "**waiting period**" means the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan. Eligibility conditions other than for the lapse of time under the terms of a group health plan are generally permissible unless such a condition is designed to avoid compliance with the 90-day waiting period limitation.

Determination Period

If a group health plan cannot determine if a newly-hired employee is reasonably expected to regularly work the number of hours required to become eligible, the plan may take a reasonable period of time to

determine whether the employee meets the plan's eligibility condition. This determination period may include the timeframe permitted under IRC § 4980H with guidance provided under IRS Notice 2012-58². The Notice offers a safe harbor method where an applicable large employer may use a measurement period of up to 12-months to determine whether certain types of new employees are full-time employees.

In the case where a waiting period that exceeds 90-days is imposed after a measurement period, IRS will not consider the health plan to be designed to avoid compliance if coverage is made effective no later than 13-months from the employee's start date plus, 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.

No Coverage While You Wait

All employees (full-time, part-time, or variable) or related individuals are not considered eligible for minimum essential coverage under the plan during any measurement period or administrative period prior to when coverage takes effect. If they meet all required conditions, these employees would be eligible to receive premium tax credits and cost-sharing

¹ Consistent with ERISA section 701(b)(4), and Code section 9801(b)(4)
<http://www.dol.gov/ebsa/pdf/tr12-02.pdf>

² Notice 2012-58 Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage (§ 4980H)
<http://www.irs.gov/pub/irs-drop/n-12-58.pdf>

reductions for coverage obtained through Exchanges.

Summary

For plan year beginning on or after January 1, 2014, a group health plan or group health insurance issuer shall not apply any waiting period that exceeds 90-days³. Plans may refer to IRS Notice 2012-58 for safe harbor guidance. PHS Act section 2708 does not require the employer to offer coverage to any particular employee or class of employees, including part-time employees. This section merely prevents an otherwise eligible employee (or dependent) from having to wait more than 90-days before coverage becomes effective.

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³ ERISA section 715(a)(1)