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## Labor & Employment Alert July 2013

### Obama Administration Delays Implementation of the Affordable Care Act's Employer Mandate

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In a surprise announcement, the Obama Administration has decided to delay the effective date of the Affordable Care Act's employer mandate known as the employer responsibility provisions or "pay or play." The delay appears to be a result of concerns raised in the business community that there was not enough time to implement changes necessary to comply with the new requirements. The mandate to provide coverage to full-time employees working 30 or more hours per week or potentially pay a penalty was scheduled to be effective as of January 1, 2014. The announced delay pushes the effective date back to January 1, 2015.

The employer mandate provides for penalties of up to \$2,000 per full-time employee on employers with more than 50 full-time equivalent employees who either do not offer health coverage or who have full-time employees who receive a premium tax credit. If an employer does not offer minimum essential coverage and one or more full time employees receive a premium tax credit, the penalty is \$2,000 per full time employee with the first 30 full time employees excluded. So, an employer with 100 full time employees that does not offer insurance would pay \$140,000 (70 x \$2,000). A full time employee is one who works 30 or more hours per week.

If an employer offers minimum essential coverage but one or more full time employees receive a premium tax credit, then the penalty is \$3,000 per employee who receives the premium credit with the maximum penalty not exceeding \$2,000 per full time employee, excluding the first 30 full time employees. Therefore, if an employer with 100 full time employees offers minimum essential coverage but has 5 full time employees receive a credit, then employer would pay \$15,000 (5 x \$3,000). The maximum penalty for that employer would be \$140,000 (70 x \$2,000).

The delay in the employer mandate will also push back employer reporting requirements on the details of their health care plans. Reporting was scheduled to begin in 2015 for information from 2014, but that will be pushed back until 2016 to report for 2015. The announcement from the Obama Administration did not address the implementation of the

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individual mandate to have qualifying coverage as of January 1, 2014. It appears that this requirement will go into effect as scheduled. Additionally, the state insurance exchanges, where individuals without qualifying coverage may go to purchase coverage, are still scheduled to go online as of October 1, 2013. It is expected that the Administration will issue guidance regarding the delayed effective date of the employer mandate and reporting requirements in the next week. Proposed regulations on reporting requirements are expected this summer, followed by a period for submitting public comments.

While the delayed effective date provides some relief, employers and benefit funds should continue to work on implementing any changes necessary to comply with the law in order to be fully compliant by January 1, 2015, so as to avoid potential penalties. The expected guidance from the Administration should provide additional information about how this delayed effective date will affect employers and plan sponsors.

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*If you have any questions or concerns with regard to the implementation of the Affordable Care Act, please contact Katherine A. Hesse, Brian P. Fox or the attorney assigned to your account.*

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