

PRIORITY

Alert

New Orientation Period Regulations Impact 90-Day Waiting Period Rule



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New federal regulations clarify the interaction between the 90-day waiting period rule and the employer pay or play penalty. The new guidance gives large employers a potential planning opportunity to align an employee's enrollment date with the pay or play penalty effective date.

In February 2014 the U.S. Departments of Labor, Treasury and Health and Human Services jointly issued final regulations regarding the new 90-day waiting period rule. Proposed regulations were issued at the same time regarding a new orientation period option.

Under the regulations, for plan years beginning in 2014, group health plans generally cannot impose a waiting period longer than 90 days for eligible employees, with coverage taking effect no later than the first day after the 90-day waiting

period has been satisfied. However, certain practices will not violate the 90-day waiting period rule. For example, a large employer subject to the pay or play penalty may adopt a look-back measurement period of up to 12 months for new hires who are not reasonably expected to work full-time upon hire. In this situation, delaying enrollment until completion of the look-back measurement period will not trigger a violation of the 90-day waiting period rule as long as coverage is effective no later than the first day of the 13th month after the employee's start date. In addition, an employer can require employees to complete a cumulative hours of service requirement of up to 1,200 hours before the 90-day waiting period begins. Another exception is that an employee can be required to satisfy a substantive eligibility condition before the 90-day waiting period begins such as achieving a job-related

licensure requirement or completing a reasonable and bona fide employment-based orientation period.

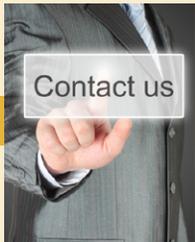
Under both the proposed regulations issued in February 2014 and new final regulations issued in June 2014, a reasonable and bona fide employment-based orientation period can be for up to one month minus one day. Longer orientation periods are not permitted.

The final regulations issued in June 2014 make no substantive changes to the proposed orientation period regulations issued in February 2014. However, the preamble to the final regulations answers a key, previously unanswered question. For large employers subject to the pay or play penalty, to avoid the penalty with respect to full-time employees, coverage is not required to be offered until the first day of the month following the employee's first three calendar months of employment. So while a large employer could delay enrollment until the first day of the month after the full-time employee's first 90 days of employment and not run afoul of the play or pay penalty, such a rule appeared to violate the 90-day waiting period requirement.

The preamble to the final regulations provides that while a large employer may not be able to impose the **full** one month minus one day orientation period followed by the **full** 90-day waiting period without potentially becoming subject to the pay or play penalty, the employer could add an orientation period and, when coupled with the waiting period, could be in compliance with both the pay or play penalty and the 90-day waiting period rule as long as coverage is offered by no later than the first day of the month after 90 days of employment.

The final orientation period regulations apply with respect to plan years beginning on or after January 1, 2015 and until that time, reliance on the proposed orientation period regulations will constitute compliance with the 90-day waiting period rule under Health Care Reform.

If you have any questions concerning the new orientation period regulations or Health Care Reform, please contact the author or any member of the Employee Benefits Practice Group.



Contact Us

If you have any questions about the articles in this issue, please contact the author. If you have any question on how any proposed health care reform changes will impact your organization, please feel free to contact Mary Bauman, chair of Miller Johnson's Health Care Reform Team, or another member of the team.

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