

Health Care Reform:

One-Month Orientation Period before 90-Day Waiting Period

The probationary or waiting period limit before an eligible employee must be brought onto the employer sponsored plan, should that employer be subject to the “pay or play” rules, is one with far reaching consequences. Through a series of regulations, this topic has been addressed under the Affordable Care Act with much scrutiny since its inception.

Final regulations on the 90-day waiting period limit were issued February 24, 2014. At the same time, the Federal agencies issued proposed regulations that allowed plans to use "**orientation periods**" of **up to one month** in addition to a 90-day waiting period as long as the period was a reasonable and bona fide employment-based orientation period.

Under the final regulations issued in June 2014, DOL, IRS and HHS confirm that **employers can require new employees to complete a one-month “orientation period” before the eligibility waiting period begins for the employer’s group health plan.** The one-month orientation period would be calculated by adding one calendar month and subtracting one calendar day, measured from an employee's starting day.

For example, if an employee's start date is May 3, the last day of the orientation period would be June 2.

The agencies noted that employer orientations are “commonplace” and that they do not question the “reasonableness” of such periods as long as they are short.

Four Highlights of the Final Regulations

1- Maximum One Month Orientation Period: One month is determined by adding one calendar month and subtracting one calendar day, measured from an employee’s start date in a position that is otherwise eligible for coverage.

2- No Particular Training Required during Orientation Period: The preamble to the final regulations says “the Departments do not intend to call into question the reasonableness of short, bona fide orientation periods.” However, it also notes that, during an orientation period, “the Departments envision that an employer and employee will evaluate whether the employment situation is satisfactory for each party, and standard orientation and training processes will begin.”

3- Interplay with Employer Shared Responsibility: The “orientation-period-plus-90-day-waiting-period” rule in these final regulations is different from the “first-day-of-the-fourth-month” rule under employer shared responsibility. The preamble notes that an “applicable large employer” (ALE) that complies with these final regulations on orientation periods and waiting period could nonetheless be subject to a penalty under IRC section 4980H if it fails to offer affordable minimum value coverage to newly-hired full-time employees by the first day of the fourth calendar month of employment.

4- Effective Date: The final regulations apply to group health plans and health insurance issuers for plan years beginning on or after **January 1, 2015**. Prior to that time, compliance with the proposed regulations will be considered compliance. Thus, through the end of the 2014 plan year, employers can comply with the proposed regulations, which are basically the same as the final regulations.

Resources or for more information:

<http://www.dol.gov/ebsa/healthreform/regulations/90day.html>

