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RENEW EARLY? PAY LATER?

May 28, 2013

While we have not heard it first-hand, we have heard through the grapevine that some insurance carriers are out there offering to their clients the ability to "renew early." Part of the strategy is, apparently, to delay the application of health care reform provisions. The following discussion addresses some risks associated with reliance on such a strategy as a means of complying with the employer mandate and the insurance mandates.

EMPLOYER MANDATE: At the outset, let's be clear about one fact: this **does not** get an employer out of play or pay. The employer mandate rules specifically say that a plan year can only be changed for a valid business purpose and that, in this case, avoiding the shared responsibility tax is not a valid business purpose. Renewing early is (assuming other legal niceties are satisfied) a change in plan year. Without a business purpose, the mandate will still apply to that employer effective January 1, 2014.

Note that this restriction also applies to fiscal year plans. A non-calendar year plan cannot now change its plan year (absent a valid business purpose) and delay the application of the play or pay penalty. In our view, such an employer would risk losing its ability to rely on the transition relief (which is already fairly skinny to begin with) by engaging in such a practice. Frankly, even if the employer has a valid business purpose, it is unclear whether changing the plan year would delay the application of the penalty.

INSURANCE MANDATES: Often times, the early renewal option is "sold" as a way to delay application of the insurance mandates. The guidance is unclear as to whether the insurance mandates can be delayed by using this tactic. Even assuming they could be, there are other issues to consider, including:

- The risk an employer takes with such an approach is getting hit with a $100/day penalty for each instance of noncompliance. Given the number of insurance mandates becoming effective in 2014 and the fact that the penalty would apply for each employee in the employer's workforce, the penalties could add up quickly.
- Plans and plan related documents would need to be amended to reflect the short plan year

- Plans filing Forms 5500 would need to file a Form 5500 for the short plan year that ends on the early renewal.
- While the agencies have said that they plan to take a more compliance assistance-oriented approach to enforcement, that attitude may not last if a regulator finds an employer has been playing games with its plan year.

The bottom line is that taking an early renewal of health insurance coverage is not a health care reform compliance "strategy" that should be entered into lightly.

MEET THE TEAM

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