

Compliance Alert

Health Plan Automatic Enrollment Rules Delayed

February 13, 2012

The Department of Labor (DOL) has issued Technical Release No. 2012-01 which, among other things, has further delayed the implementation of the automatic enrollment requirements contained in the Affordable Care Act (ACA). According to the release, the health plan automatic enrollment requirement will not be effective before 2014.

Background

The ACA amended the Fair Labor Standards Act (FLSA) to require employers that have more than 200 full-time employees, to automatically enroll new full-time employees in one of the employer's health benefits plans. The rule also requires adequate notice and the opportunity for an employee to opt out of any coverage in which the employee was automatically enrolled.

The effective date of the automatic enrollment requirements was unclear in the original legislation, but was stated that employer compliance would be based on the release of guidance from the DOL. On December 22, 2010, the DOL announced that until regulations are issued, employers are not required to comply with the automatic enrollment requirements. At that time the DOL expected regulations to be issued prior to 2014.

Further Delay

In Technical Release No. 2012-01 the DOL states that it must coordinate the development of automatic enrollment regulations with rules under development related to other ACA related provisions, such as the 90-day waiting period and the employer-shared responsibility rules. In light of this, the DOL states "**that its automatic enrollment guidance will not be ready to take effect by 2014**". The announcement also confirms that employers are not required to implement automatic enrollment until after guidance is issued.

While the language of this announcement does not clarify if the rule may be effective some time during 2014, it is clear that employers will not need to worry about complying with the automatic enrollment provisions during 2012 and 2013. The text of the announcement is included below.

Technical Release No. 2012-01

Q1. What is the current timeline for issuing guidance on automatic enrollment under FLSA section 18A?

A1. The Department of Labor has been working with stakeholders to ensure that it has the necessary information and data to develop regulations relating to automatic enrollment, and is sensitive to stakeholder concerns regarding the need for adequate time to comply with any regulations that are ultimately issued. In addition, the Department of Labor is aware of the need to coordinate the work it will be undertaking to develop guidance relating to automatic enrollment with the guidance being developed regarding other related Affordable Care Act provisions, including the employer shared responsibility provision and the 90-day limitation on waiting periods, described above.

In view of the need for coordinated guidance and a smooth implementation process, including an applicability date that gives employers sufficient time to comply, the Department of Labor has concluded that its automatic enrollment guidance will not be ready to take effect by 2014. It remains the Department of Labor's view that, until final regulations under FLSA section 18A are issued and become applicable; employers are not required to comply with FLSA section 18A.

The McCart Group will continue to update you on the regulations as they are released.

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