

September 28, 2012

Sent via email to: e-ohpsca-er.ebsa@dol.gov

RE: COMMENTS TO DOL ON DOL TECHNICAL RELEASE 2012-02 (AKA IRS NOTICE 2012-59)

Pursuant to your request for comments on the 90-day waiting period limit under PPACA (effective the first plan year beginning on or after January 1, 2014), I submit the following questions, which I have received from numerous clients.

90-DAY WAITING PERIOD:

Q. How does the maximum 90-day waiting period apply as of January 1, 2014 in the following situations? Assume in all cases that the employer has a 6-month (180-day) waiting period and a January 1 plan year and that the employees are ongoing employees who were hired to—and regularly do—work at least 30 hours per week.

A. For employees who have worked less than 90 days as of January 1, 2014: Does their waiting period begin January 1, or must the employer count prior service time?

B. For employees who have been employed more than 90 days but less than 6 months: Does the 90-day waiting period start as of January 1, 2014? Or must the employer count prior time worked since date of hire (so such employees must be offered coverage as of Jan 1, 2014)?

C. For employees who have been employed more than 6 months but were not previously offered coverage because they were not eligible under the plan's criteria (either because they worked at least 30 hrs/week but less than 37.5 or 40, or because they were in a "non-benefit-eligible" classification of employees): When must they be offered coverage? As of January 1, 2014? Or as of April 1, 2014 (i.e., within 90 days of January 1, 2014)?

Q2. Same as above, but employer has an April 1 plan year. Does the "maximum 90-day waiting period" requirement not apply until April 1, 2014? Does the waiting period start April 1, or must the employer count prior service time (so must offer coverage as of April 1 if the employee has worked on average at least 30 hours per week for the past 90 days)?

Thank you,



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