

Publications

IRS Request for Comments on Employer Mandate, Full-Time Employee Definition, and Waiting Period Issues

ATTORNEYS & PROFESSIONALS

Tamara Killion

tkillion@groom.com

202-861-6328

Brigen Winters

bwinters@groom.com

202-861-6618

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The IRS and Treasury recently released Notice 2011-36 (the “Notice”) (it was released on May 3 and will be published in IRB 2011-21 on May 23), which requests comments on issues related to the employer “shared responsibility” mandate and other related requirements in the Patient Protection and Affordable Care Act (“PPACA”). In particular, the Notice requests comments on possible approaches that employers could take to determine which employees are full-time employees for purposes of the shared responsibility mandate and other provisions. Notably, the Notice also requests comments on how the Departments of Treasury, Labor, and Health and Human Services (the “Agencies”) should interpret and apply the 90-day limitation on waiting periods under PPACA and the interaction between the shared responsibility mandate provisions and the determination of the maximum permissible waiting period. Comments are due by June 17.

The Notice provides that “[t]his notice does not constitute guidance” and instead describes “potential approaches” on certain discrete issues that could be incorporated into future proposed regulations. Nevertheless, the Notice provides helpful insights into the Agencies’ current thinking on several key issues relating to the shared responsibility mandate and 90-day waiting period limitation. Please see the attached memo for a summary of key issues addressed in the Notice.

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