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Federal Courts Delaying Vaccine Requirements for Employers

In an effort to get more Americans vaccinated against COVID-19, the Biden Administration in September announced new requirements for federal contractors, certain healthcare providers, and employers with at least 100 employees to mandate that their employees be vaccinated. All three rules are now temporarily on hold as different federal courts attempt to resolve a variety of legal challenges to each.

As reported in Rewards Policy Insider 2021-22, the Occupational Safety and Health Administration (OSHA) has suspended all implementation and enforcement activities with respect to its Emergency Temporary Standard (ETS) for employers under OSHA's jurisdiction that have 100 or more employees. OSHA made that decision in response to a temporary stay of the ETS issued by the Fifth Circuit Court of Appeals on November 12.

The Fifth Circuit case has since been consolidated with more than 20 others that were filed in a variety of different federal circuits and is now under the jurisdiction of the Sixth Circuit Court of Appeals. OSHA has filed a request for the Sixth Circuit to lift the Fifth Circuit's stay, but no ruling has been issued so far.

Separately, the Senate recently passed a Congressional Review Act resolution of disapproval of the ETS. A similar resolution has been introduced in the House, but a vote is not expected. Even if the House were to take it up and pass it, President Biden has signaled he would veto it.

What About the Other Rules?

As noted, the OSHA ETS was only one of three rules requiring employers to implement vaccination mandates. The others were directed at federal contractors and healthcare providers.

In response to a challenge filed by three states – Kentucky, Ohio, and Tennessee – the U.S. District Court for the Eastern District of Kentucky issued a preliminary injunction of the Federal contractor rule on November 30. That was followed by the Federal District Court for the Southern District of Georgia, which issued a nationwide temporary injunction against the federal contractor mandate.

The U.S. District Court for the Western District of Louisiana on November 30 issued a nationwide preliminary injunction against the Centers for Medicare and Medicaid Services (CMS) rule relating to certain health providers and healthcare workers. One day earlier, a St. Louis-based federal district court issued a preliminary injunction against the CMS rule that only applied in 10 states.

What's Next?

Each of the three rules were originally scheduled to be fully implemented by January 4, 2022. For all three mandates, the relevant injunctions will need to be lifted between now and then in order for them to be implemented by that date.

The other possibility is that the preliminary injunctions remain in place until the various federal courts involved resolve the relevant legal challenges. That could take some time, especially if either or both cases end up being appealed to the Supreme Court.

IRS Proposes Permanent Deadline Extensions for Certain ACA Reporting Requirements

The IRS has issued proposed regulations that would provide an automatic 30-day extension of the deadlines for providers of minimum essential coverage (including employers with self-insured plans) to furnish statements to covered individuals, and for "Applicable Large Employers" to furnish statements relating to the health insurance offered to full-time employees.

According to the preamble to the proposed regulations, employers can rely on the proposed regulations for calendar years beginning after December 31, 2020. For the 2021 reporting year, that means:

- Applicable Large Employers (i.e., those with 50 or more full-time employees) will have until March 2, 2022 (instead of January 31, 2022) to provide the Form 1095-C to all full-time employees, and to part-time employees and non-employees covered by the employer's group health plan (if self-insured).
- However, the deadline for electronically filing the Form 1094-C information return with the IRS will still be March 31, 2022.

Significantly, the good faith relief from penalties for reporting incorrect or incomplete information on IRS information returns or individual statements will no longer be available for the 2021 or future reporting years.

Background

In general, health insurance issuers and employers with self-insured group health plans have to issue a statement each year to individuals to whom they provide "minimum essential coverage," and also provide relevant information to the IRS. The individual statements (Form 1095-B or Form 1095-C, in the case of a self-insured plan) are due by January 31 for the immediately preceding calendar year, and the reports to the IRS (Form 1094-B) are due by March 31 for electronic filers (and February 28 for others).

For employers with 50 or more full-time employees (i.e., "Applicable Large Employers" or "ALE"), there is a separate information return and individual statement requirement associated with the employer shared responsibility rules. Same as above, the individual statements (Form 1095-C) are due by January 31 for the immediately preceding calendar year, and the IRS information return (Form 1094-C) is due by March 31 (or February 28 for non-electronic filers).

Current regulations allow the IRS to grant an extension of up to 30 days to furnish Forms 1095-B and 1095-C for "good cause shown." Additionally, an automatic 30-day extension of the deadline for filing Forms 1095-B, 1094-C, and 1095-C is available by filing a Form 8809 before the otherwise applicable due date.

Since these requirements first became effective in 2015, the IRS has routinely granted extensions of the due dates for furnishing Forms 1095-B and 1095-C. With the exception of 2015, the extensions have been for 30 days (or the next business day if the 30th day fell on a Saturday, Sunday, or legal holiday). Most recently, Notice 2020-76 extended the deadline for providing Forms 1095-B and 1095-C to individuals for the 2020 calendar year from January 31, 2021 until March 2, 2021.

Proposed Regulations

The proposed regulations would provide the following relief:

- Forms 1095-B will be timely if furnished no later than 30 days after January 31 of the calendar year following the calendar year in which minimum essential coverage is provided. If the extended deadline falls on a weekend or legal holiday, the deadline will be the next business day.
- For any year that the ACA individual shared responsibility penalty is zero (which it is for 2021 and for the foreseeable future), a health insurance issuer can satisfy its obligation to furnish the Form 1095-B by posing a clear and conspicuous notice on its website that the Form 1095-B will be provided to individuals upon request. Self-insured ALEs can also use this alternative method to furnish the 1095-C to part-time employees and non-employees enrolled in their plans.
- ALEs have an automatic 30-day extension to furnish written statements (Form 1095-C) to full-time employees. ALEs will not have to make a written request to the IRS showing good cause or otherwise request this extension. If the extended deadline falls on a weekend or a legal holiday, the deadline will be the next business day.
- The transitional good faith relief from penalties for reporting incorrect or incomplete information on information returns or statements, that had been available for each year through the 2020 reporting year, will not be available for 2021 and beyond.

Note that the deadlines for information reporting to the IRS on Forms 1094-B and 1094-C are not changed. That is, they continue to be due by March 31 (or February 28 for non-electronic filers).

Final Infrastructure Bill Extends Interest Rate Smoothing Relief for Pension Plans

On November 15, President Biden signed the $1 trillion Infrastructure Investment and Jobs Act (IIJA) into law. Among the bill's revenue raisers is a provision to further extend the interest rate smoothing enacted earlier this year as part of the American Rescue Plan (ARP) Act.

Specifically, the ARP delayed the scheduled widening of the interest rate stabilization corridor. Before the ARP, the corridor was scheduled to begin expanding from 90% to 110% in 2020, to 85% to 115% in 2021, and then continuing to expand each year until it reached 70% to 130% in 2024 and beyond.

The ARP actually reduced the corridor to 95% to 105% for the period from 2020 through 2025. It then would have returned to 90% to 110% for 2026, and then started expanding each year until it reaches 70% to 130% in 2030 and beyond.

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