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Submitted electronically via: e-ohpsca-er@dol.gov
Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

RE: Notice 2012-17 Frequently Asked Questions from Employers Regarding Automatic Enrollment, Employer Shared Responsibility, and Waiting Periods

As an employer of more than 40,000 individuals throughout the country, Ruby Tuesday, Inc. appreciates the opportunity to provide input on the items addressed in Notice 2012-17. Our company strongly supports employer provided health care coverage for our employees. Currently, we offer some form of coverage to all employees regardless of hours worked. It is our goal to continue to provide access to health insurance coverage for as many of our employees as possible; however, there are aspects of the legislation that may prevent us from doing so. Therefore, your consideration of the items below is greatly appreciated.

Affordability safe harbor & the use of W-2 wages

While the use of prior year's W-2 wages will be helpful in determining affordability and budgeting from an employer's prospective, it would also be helpful to be able to use current wages for full time new hires where an employer would not have access to prior year W-2 information. The employer could determine affordability using the current salary (a known amount) they will be paying the new employee.

Coordination of Employer shared Responsibility and 90-day waiting period

For simplicity in plan administration, if a full-time employee is satisfying a waiting period before coverage becomes effective, the employer should not be assessed a penalty for this employee during the waiting period. Waiting periods are generally used to gather information and complete applicable processes to make coverage effective. In high turnover industries, such as the restaurant industry where the majority of the turnover occurs within the first 90 days of employment, the waiting period allows employers to hold down plan expenses by only enrolling the individuals who will continue employment after their training period. Adding individuals who end-up being very short-term plan participants would increase the administration expense of the plan and making it more expensive for the remaining participants.

Look-back/Stability period

Consider allowing employers to sync up look-back/stability periods for all employees regardless of whether they are newly hired. For example, in the restaurant industry, employees are hired daily. To track 12-month look-back periods by employee would create daily reviews of the recordkeeping system to determine if eligibility has been met. After the initial year of employment, it would be more administratively economical to evaluate plan eligibility on an annual basis coinciding with the annual open enrollment. For example using a calendar year plan, the evaluation of hours worked in 2012 would determine plan eligibility for 2013. That way, an employee who did not work enough hours for coverage in one year may be eligible for coverage the next if their hours worked increased from year to year. Working on an annual basis would make it easier for the employee and the exchange to determine where coverage could be obtained from year to year and avoid mid-year changes where deductibles would have to be met multiple times should the employee be required to switch plans midyear.

90-Day Waiting Period and the Look-back Period

Regardless of the waiting period or look-back period being used, it does take time for the individual to select their coverage and for the employer to process the enrollment in that coverage. In the case where a 90-day waiting period is used in conjunction with a look-back period, consider having these two periods run concurrently. This would cap the time an individual had to wait to obtain employer coverage at a maximum of 12 months. There would have to be an administrative period to actually process the enrollment and establish the payroll deduction, currently 31 days for other situations. Therefore, there is the possibility for initial retroactive premium deductions for the employee's pay, but the time period before coverage is in place is limited.

Your consideration of our comments is appreciated as the details of this legislation are established. Additionally, I am available to discuss any of these items in more detail.

Respectfully,

Belinda Sharp Kitts

Belinda Sharp Kitts
Vice President of Human Resources
Ruby Tuesday, Inc.