

## ACA Orientation Period Final Regulations Issued

The DOL, IRS and HHS have issued [final regulations](#) clarifying the maximum length of an employee orientation period in light of the 90-day waiting period limitation ([ErisaALERT 2012-13](#)) under the Affordable Care Act.

To guard against potential subterfuges for the passage of time, final regulations provide that one month is the maximum allowed length of an employee orientation period. One month is measured by adding one calendar month and subtracting one-calendar day from the employee's start date in a position that is otherwise eligible for coverage. The maximum 90-day waiting period must begin on the first day after the orientation period. For example, if an employee's start date is May 3, then the last permitted day of the orientation period is June 2 and the waiting period begins on June 3.

**Important Note** - The preamble to the regulations reminds employers subject to the shared responsibility requirements that they may not be able to impose the full one-month orientation period and the full 90 day waiting period without becoming subject to the IRC 4980H penalty. For example, an employee hired on January 6 is offered coverage on May 6; the plan sponsor satisfies the orientation period and 90 day waiting period requirement. However, an applicable large employer imposing a one month orientation period followed by a 90 day waiting period may find themselves subject to an assessable penalty.

Employers that require or are considering requiring an employee orientation period as an eligibility condition for benefits should:

- Ensure that the orientation period does not exceed one month as defined in the regulations
- Ensure that the waiting period begins on the first day after the orientation period ends.
- Understand that the requirement for an orientation period is independent of an applicable large employer's responsibility requirement to offer affordable, minimum value coverage in compliance with the 90 day waiting period rules.
- Review employee communication materials, including plan documents and summary plan descriptions, to ensure that the orientation period is accurately described as a condition for eligibility.

The final regulations apply to group health plans and group health insurance issuers for plan years beginning on or after January 1, 2015.

**Note:** all links are active as of the date of issuance of this ErisaALERT.

Disclaimer: This material is for the sole purpose of providing general information and does not under any circumstances constitute legal advice and should not be used as a substitute for legal advice. You should seek the advice of counsel when applying the requirements to your plan. For more information on this ErisaALERT contact us by phone at 610-524-5351 and ask for Mary Andersen or 201-857-1137 and ask for Leanne Fosbre or 215-508-5629 and ask for Theresa Borzelli at SFE&G.