

Hurry Up and Wait—New Waiting Period Guidance for Health Plans

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By [Stephen A. Riga](#)

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Until further guidance is issued, employers should implement the new waiting period rules under Notice 2012-59 as follows:

- A “waiting period” is the time an individual who would be otherwise eligible for coverage must wait before he or she may enroll in coverage under a health plan.
- Conditions for eligibility based solely on the length of employment cannot last longer than 90 days.
- Other conditions are permitted, but they may not be designed to avoid compliance with the 90-day limitation.
- Plans with a minimum hour requirement for eligibility may impose a new safe harbor measuring period described by Notice 2012-58 if the employer cannot determine an employee’s eligibility prior to employment.
- A delay in enrollment due to an employee’s failure to elect coverage is not considered part of the plan’s waiting period. Employers remain free to require timely enrollment using a reasonable application process

(at least until the automatic enrollment rules under the ACA apply).

The guidance also addresses variable-hour employees, allowing longer measuring periods that may delay the receipt of coverage for more than 90 days. For example, let's take a health plan that requires employees work at least 30 hours per week and imposes a 180-day measuring period for variable-hour employees. The plan permits enrollment on the first day of the month after the 180-day measuring period ends for those employees who meet the eligibility requirements during the measurement period and elect coverage.

If a new employee's schedule is variable, the employee may or may not work in excess of 30 hours per week. In that case, since the employer is unable to determine the new employee's eligibility, a longer measuring period is permitted. After the 180-day measuring period is completed, the hours worked throughout the period are averaged and the employee may enroll if the average meets or exceeds the 30-hour requirement during the measurement period. As long as the plan is consistent with the new safe-harbor rules under Notice 2012-58, the eligibility terms for this plan do not violate the waiting period limit, even though the plan requires the new variable-hour employee to wait at least six months for coverage.

This guidance will apply to the 2014 plan year and any new guidance or regulations on waiting periods will not be effective until 2015 at the earliest. ([Read here](#) to learn more about the likely timing and impact of new regulations on current temporary guidance.) Employers will want to check their plan's eligibility requirements and enrollment rules to confirm compliance with Notice 2012-59 for the 2014 plan year.

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