

ACA 90-Day Waiting Period Regulation

In order to discourage employers from abusing extended “waiting periods” for employees to obtain health care coverage, the Affordable Care Act (ACA) defines how long an employer may require a new employee to be employed before providing health care coverage.

The regulation allows companies to have a waiting period that may not exceed ninety (90) calendar days from the first day of employment. The exception is when a company has a “bona-fide orientation period” that is not to exceed one month. As a note, “bona-fide employment-based orientation” is not defined by federal mandate; however, the Department of Health and Human Services recognizes a need for employers to have some flexibility regarding the monitoring and regulating of their employees. The one-month orientation may not be used to avoid compliance with the ninety (90) day waiting period, but may be applied to evaluate whether the employment situation is satisfactory for each party and for training purposes.

If state regulation mandates that employers provide coverage earlier than required by the federal act, the employer shall follow state regulation.

In the State of Hawaii, pursuant to the Prepaid Health Care Act, most employers are required to provide full-time employees, defined as working for at least twenty (20) hours a week for four (4) consecutive weeks, with health care coverage. The ACA regulation would generally apply to employers in Hawaii who are **exempt from the Prepaid Health Care Act**.

Options for Employers

- The federal regulation defines the maximum time period an employer may have before providing health coverage for their employees; therefore, an employer may choose to provide health coverage to an employee earlier than the ninety (90) day maximum. It is also important to note that the employer must be in compliance with all state insurance regulation in addition to federal regulations.
- Orientation Period Allowance: Employers are allowed to have a maximum one-month bona-fide employment-based orientation period. This is provided by the Regulatory Flexibility Act.
 - The company may add the one-month orientation period to the maximum 90-day waiting period before providing an employee with health insurance coverage.
 - Eligibility requirements during the orientation period may vary and are not entirely specified in the federal act, but the employer must not extend beyond the orientation period plus the waiting period provided in the Act.

These regulations generally apply to group health plans and insurers for plans beginning on or after January 1, 2015.

Please note this document and communication are not intended to provide legal advice, and we highly recommend that you seek guidance from your own legal counsel.