Labor and Employment Alert: Reporting Eligibility for and Enrollment in Health Coverage

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The IRS will need detailed information from employers to enforce three Affordable Care Act (ACA) tax provisions. The IRS must determine whether: (1) an employer owes a pay or play penalty for failing to offer affordable, minimum value health coverage to its full-time employees; (2) employees and/or their family members are entitled to tax credits (subsidies) for the purchase of health insurance in the public exchanges; and (3) employees and/or their family members owe penalties for failing to maintain health coverage.

The IRS created new tax forms for the collection of the information.

"B" Forms

"C" Forms

Used by insurers and multiemployer plans to report identifying information and enrollment in health coverage.

Used by Applicable Large Employer (ALE) members to report identifying information (Part I); eligibility for both insured and self-insured health coverage (Part II); and, if applicable, enrollment in self-insured health coverage (Part III).

Form 1095-B Health Coverage Statement

Form 1095-C Employer-Provided Health Insurance Offer and Coverage Statement

Form 1094-B Transmittal

Form 1094-C Transmittal

Instructions for Form 1094-B and Form 1095-B

Instructions for Form 1094-C and Form 1095-C

The forms, published February 4, 2015, are labeled "2014" but you are not required to report for 2014. The first year for which reporting is required is 2015. The 2015 Form 1095-Cs will be distributed to employees and filed with the IRS in 2016 on the same schedule as Form W-2 and Form W-3: the Form 1095-Cs will be distributed to employees by February 1, 2016 (January 31, 2016 is a Sunday) and the Form 1095-Cs will be filed with the IRS (along with a Form 1094-C transmittal) by February 29, 2016 (if filing on paper) or March 31, 2016 (if filing electronically). If an ALE member has 250 or more Form 1095-Cs, it must file electronically.

What an employer needs to file depends on the size of the employer and whether its health coverage is insured or self-insured.

No health plan

Insured health plan

Self-insured health plan

Small employer – Fewer than 50 full-time equivalent employees (FTEs)

Small employer does not file.

Small employer does not file.

Insurer files Form 1095-B.

An entity this small would not normally have a self-insured health plan but, if it did, it would file Form 1095-B.

ALE – 50 to 99 FTEs

ALE member files Form 1095-C, Parts I and II (not Part III), even though it may not be subject to pay or play penalties in 2015.

ALE member files Form 1095-C, Parts I and II (not Part III), even though it may not be subject to pay or play penalties in 2015.

Insurer files Form 1095-B.

An entity this small would not normally have a self-insured health plan but, if it did, it would file Form 1095-C Parts I, II, and III, even though it may not be subject to pay or play penalties in 2015.

ALE – 100 or more FTEs

ALE member files Form 1095-C, Parts I and II (not Part III). Penalties apply in 2015.

ALE member files Form 1095-C, Parts I and II (not Part III).

Insurer files Form 1095-B.

ALE member files Form 1095-C, Parts I, II, and III.

If your company is an applicable large employer member with a self-insured health plan, you will need to prepare a Form 1095-C for:

- each employee who is classified as full-time (under IRS rules) during one or more months in 2015;
- each employee who enrolled in your health coverage despite not being classified as full-time during any month (if you offer coverage to employees who are not classified as full-time); and
- each individual who enrolled in coverage but was not, in any month of the year, enrolled as an employee or as the family member of an employee (such as a partner in a partnership or a retiree).

You will need to select an IRS code (Line 14, code 1A, 1B, 1C, 1D, 1E, or 1F) to indicate whether an employee and the employee's spouse and/or children are eligible for your coverage each month and whether the coverage meets the minimum value standard. An employee who is offered health coverage during open enrollment but declines to enroll is generally coded as eligible for every month. The fact that an employee is not eligible for coverage in a month (Line 14, code 1H) does not necessarily mean you are subject to penalties for that month: you may be able to use a code in Line 16 to indicate that penalties do not apply. For example, the employer would not be subject to penalties for months that the employee is in an initial waiting period (Line 16, code 2D) or not employed by the employer (Line 16, code 2A).

If you are using the look-back measurement method to identify full-time employees, a new part-time employee is not classified as full-time until after he or she has been credited with at least 1,560 hours in an initial 12-month measurement period and completed the associated administrative period. That can be up to 13 months plus a fraction of the 14th month.

Example: An employer using a 12-month initial measurement period hires Adam, a variable hour employee, on April 1, 2015. The employer would not need to prepare a Form 1095-C for Adam in 2015 because Adam was not eligible for or enrolled in the employer's health coverage in 2015. If Adam has at least 1,560 hours in the 12-month initial measurement period ending March 31, 2016, the employer would offer health coverage starting no later than May 1, 2016. The employer would then need to prepare a Form 1095-C for all of 2016. January through April 2016 would be coded as a "limited non-assessment period" (Line 16, code 2D), meaning the employer would not be assessed pay or pay penalties for the initial measurement period and associated administrative period.

Action item: If you have not already done so, you may want to consider whether you will manage these new reporting responsibilities in-house or if you will find a vendor to facilitate reporting.

A Review of the Basics of the Employer Pay or Play Penalties

Starting this year, an applicable large employer member will be subject to pay or play penalties if it fails to offer affordable health coverage that provides at least minimum value to its full-time employees.

- An "applicable large employer" (ALE) is a company (or a controlled group of companies) with an average of 50 or more full-time (FT) and full-time equivalent (FTE) employees in the prior calendar year. An employer with 50-99 FT and FTEs in 2014 gets a bit of a break for 2015: if it meets certain conditions, it is not subject to pay or play penalties in 2015 but it still has Form 1095-C reporting obligations for the year.
- An "ALE member" is one company within a controlled group of companies where the group as a whole is an applicable large employer. Each ALE member prepares Form 1095-Cs under its EIN. A controlled group of companies is not permitted to consolidate reports.
- The IRS has detailed rules for determining whether an employee must be classified as FT. Generally, a FT employee is an employee who works an average of 30 hours per week over a 12-month measurement period.
- A health plan is "affordable" if the employee contribution for single coverage does not exceed 9.5% of an employee's household income. Since the employer will not know the employee's household income, the IRS provided three affordability safe harbors.
- A health plan provides "minimum value" if: (a) it is designed to pay at least 60% of the total cost of medical services for a standard population; and (b) it provides substantial coverage of physician services and in-patient hospitalizations. This is generally equivalent to a bronze level plan sold in the public health insurance Exchange. Your insurer or TPA should be able to provide your plan's percentage or you can use the Minimum Value Calculator published by the Centers of Medicare and Medicare Services.
- "Minimum essential coverage" is any kind of employer-sponsored health coverage *other than* health coverage classified as an excepted benefit. This includes medical plans (e.g., PPOs, HMOs, and high-deductible health plans) even if less than minimum value. Dental and vision coverage, health FSAs, EAPs and fixed indemnity insurance are generally classified as excepted benefits (i.e., not minimum essential coverage). Reporting is required for minimum essential coverage but not excepted benefits.
- See our February 21, 2014 ***Client Alert:*** **Employer Pay or Play Penalties in 2015** and **IRS Publication 5196** for more information.

TWO OTHER EMPLOYEE BENEFIT TASKS:

Update SPDs to incorporate new group health eligibility standards

If you had to change the eligibility standards for your group health coverage so as to avoid exposure to the employer pay or play penalties, you will want to be sure your summary plan description (SPD) and plan documents are updated to reflect the new standards. In addition, be sure to check employee handbooks and other materials which may include a summary of eligibility for group health coverage and see if they also need updating.

Develop a strategy for postponing application of the Cadillac excise tax

Have you projected the cost of your health benefits in 2018 and beyond? One of the significant revenue raisers under the ACA is the so-called Cadillac excise tax – a non-deductible 40% excise tax on high-cost health plans starting in 2018. The excise tax will apply to health benefits that cost more than $10,200 for individual coverage or $27,500 for family coverage. The cost of health benefits will be based on COBRA premiums. The $10,200 and $27,500 thresholds will be indexed but at a rate below medical inflation so that, over time, more and more health plans will – if no action is taken – exceed the thresholds. For that reason, you may want to project when your health benefits may reach the thresholds.

For purposes of the Cadillac excise tax, minimum essential coverage and some types of excepted benefits are included in the cost. Medical coverage must be aggregated with health flexible spending accounts (FSAs), health reimbursement accounts (HRAs) and employer and employee pre-tax contributions to employees' health savings accounts (HSAs). If an employer has an on-site health clinic providing routine care, the COBRA value of the clinic is also factored into the calculation. Insured dental and vision coverage are excluded from the calculation and we expect that the IRS will also exclude self-insured dental and vision coverage. Several special rules and adjustments will provide somewhat higher thresholds for retirees and certain other groups.

To postpone the application of the Cadillac excise tax, employers may resort to the strategies such as eliminating some benefits (such as health FSAs and employee pre-tax contributions to HSAs) and increasing participant cost sharing. Narrow networks, reference pricing (when and where available) and payment reform (pay for value instead of pay for volume) may also help. Interestingly, most of the funds that the Congressional Budget Office (CBO) expects to collect in connection with the Cadillac excise tax is not from the excise tax itself. Rather, the CBO expects to collect more payroll taxes as employers shift from non-taxable health coverage to taxable wages. And of course we continue to hope that Congress will repeal or at least modify the excise tax, if not by 2018 at least within a few years after.