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Affordable Care Act Year-End Reporting Requirements and Extended Deadlines

January 15, 2016

This Alert serves as a reminder of certain Affordable Care Act ("ACA") year-end reporting requirements imposed under Sections 6055 and 6056 of the Internal Revenue Code of 1986, as amended (the "Code"). Section 6055 requires employers who sponsor self-insured health plans, among others, to file information returns with the Internal Revenue Service ("IRS") confirming that persons covered under such plans had minimum essential coverage during the prior calendar year and provide "responsible individuals" with a statement showing the information that was reported to the IRS.[1] Section 6056 requires applicable large employers to provide statements to their full-time employees and to file information returns with the IRS regarding the health coverage offered (or not offered) by the employer during the prior calendar year.

Deadline for furnishing and filing and 2015 extension

On December 28, 2015, the IRS issued Notice 2016-4, which extends the due dates for furnishing and filing the new ACA reporting forms for the 2015 calendar year.

Under Notice 2016-4, each applicable large employer subject to the ACA's 2015 information reporting requirements must furnish Form 1095-C (or a substitute statement) to its full-time employees no later than March 31, 2016 (originally February 1, 2016) and must file a Form 1095-C for each full-time employee and Form 1094-C to transmit its Forms 1095-C to the IRS no later than May 31, 2016 (originally February 29, 2016), or June 30, 2016 if filing electronically (originally March 31, 2016).

In addition, under Notice 2016-4, each employer that is not an applicable large employer but who sponsors a self-insured plan must furnish Form 1095-B (or a substitute statement) to responsible individuals for persons covered under such self-insured plan no later than March 31, 2016 (originally February 1, 2016) and must file a Form 1095-B for each responsible individual and Form 1094-B to transmit its Forms 1095-B to the IRS no later than May 31, 2016 (originally February 29, 2016), or June 30, 2016 if filing electronically (originally March 31, 2016).[2]

Despite the due date extension, an employer is permitted to provide the applicable forms to full-time employees, responsible individuals or the IRS on or before the due date. The IRS is encouraging employers to "furnish statements and file the information returns as soon as they are ready."

Penalties

Unless the transition relief discussed below applies, the penalty for failure to file a correct Form 1095-C, 1094-C, 1095-B and 1094-B generally is $250 for each return for which such failure occurs. The total penalty imposed for all failures during a calendar year cannot exceed $3,000,000.

The penalty for failure to furnish a correct Form 1095-C to an employee is $250 for each statement for which the failure occurs, with the total penalty for a calendar year not to exceed $3,000,000.

The penalty for failure to furnish a correct Form 1095-B to a responsible individual with respect to a self-insured plan is $250 for each statement for which the failure occurs, with the total penalty for a calendar year not to exceed $3,000,000.[3]

Who is required to report

Section 6056 of the Code requires reporting by each "applicable large employer," a term which is defined as an employer that employed an average of at least 50 full-time employees on business days during the preceding calendar year. A full-time employee generally includes any common law employee who was employed on average at least 30 hours of service per week and any full-time equivalents.[4] All employers treated as a single employer under the Code's controlled group or affiliated service group rules are treated as one employer for purposes of determining applicable large employer status.

An applicable large employer (or any individual member of an applicable large employer group) with fewer than 100 full-time employees (including full-time equivalents) during 2014 are generally eligible for transition relief from the employer shared responsibility penalty for the 2015 plan year. Nevertheless, these employers are still subject to the reporting requirements for the 2015 calendar year.

Section 6055 of the Code requires any entity that provides minimum essential coverage to an individual during a calendar year to report certain information to the IRS and provide responsible individuals with a statement showing the information that was reported to the IRS. Each employer who sponsors a self-insured health plan is obligated to report as a sponsor of a self-insured plan under Section 6055 of the Code, regardless of whether such employer is subject to the employer shared responsibility provisions or the information reporting requirements for applicable large employers. As discussed below, an applicable large employer who is obligated to report under Sections 6055 and 6056 of the Code will file combined information returns with the IRS and furnish combined information statements to responsible individuals.

Employee information statement

Each applicable large employer must furnish a completed Form 1095-C (or a substitute form) to each person who was a full-time employee of the employer for any month of the 2015 calendar year.[5] An employer is not required to furnish to its full-time employees a copy of Form 1094-C as filed with the IRS. If two or more related companies together are an applicable large employer, each company must furnish a Form 1095-C (or a substitute statement) to its own full-time employees, using its own EIN. The Form 1095-C will report the following information to the IRS:

- The employee's name, address and Social Security number
- The employer's name, address and employer identification number
- Whether the employee and family members were offered health coverage each month that met the minimum value standard[6]
- The employee's share of the monthly premium for the lowest-cost minimum value health coverage offered
- Whether the employee was a full-time employee each month
- The affordability safe harbor applicable for the employee[7]
- Whether the employee was enrolled in the health plan
- If the health plan was self-insured, the name and Social Security number (or birth date if the Social Security number is unavailable) of each employee and family member covered by the plan by month

Each applicable large employer that sponsors a self-insured plan will complete Parts I and III of the 1095-C for any employee that enrolls in the health coverage, whether or not the employee is a full-time employee. If the employee is a full-time employee, the employer must also complete Part II. Part II of the form includes information about the offer of coverage that was made to the employee, the employee's share of the lowest cost monthly premium, and other employer responsibility information.

Each applicable large employer that provides fully insured coverage will complete Parts I and II of Form 1095-C, but will not complete Part III of the form. Part III of the form reports information about minimum essential coverage and will be separately reported to the IRS by the entity providing the coverage, such as the health insurance carrier.

Responsible individual information statement

Form 1095-B is the return used for reporting minimum essential coverage under Section 6055 of the Code to the IRS and for furnishing coverage information to responsible individuals.[8] Each employer that is not an applicable large employer but who sponsors a self-insured plan is required to furnish a Form 1095-B (or a substitute form)

to each person identified as the responsible individual on the form. The responsible individual may be the primary insured, employee, former employee, parent, or other related person named on the coverage application. The Form 1095-B will report the following information to the IRS in the case of an employer who sponsors a self-insured plan:

- The responsible individual's name, address and Social Security number
- The employer's name, address, employer identification number and contact person
- The name and Social Security number (or birth date if the Social Security number is unavailable) of the employee and the employee's family members covered by the plan by month

Applicable large employers are not required to furnish a Form 1095-B to responsible individuals if they furnish a 1095-C that includes the information required under Form 1095-B to such individuals in the manner described above.

Delivering information statements to employees and responsible individuals

The Form 1095-C or 1095-B may be delivered to employees in any manner permitted for delivery of Form W-2. The regulations permit, but do not require, employers to furnish Forms 1095-C and 1095-B electronically to employees and responsible individuals if certain notice, consent, and hardware and software requirements are met. The regulations require that an employer obtain consent from an employee or responsible individual before Form 1095-C or Form 1095-B may be furnished electronically to such employee or responsible individual. An employer may hire a third party administrator or other third party service provider to furnish the statements to employees or responsible individuals.

IRS information return

Generally, an applicable large employer must file a Form 1095-C (or a substitute form) with the IRS for each person who was a full-time employee of the employer for any month of the calendar year. In addition, an applicable large employer that sponsors a self-insured plan must file a Form 1095-C for each employee who enrolls in the self-insured health coverage or enrolls a family member in the coverage, regardless of whether the employee is a full-time employee for any month of the calendar year. If an employer is required to file 250 or more information returns, the employer must file electronically.[9]

Each applicable large employer will file a Form 1094-C (or a substitute form) to transmit its Forms 1095-C to the IRS.[10] If two or more related companies together are an applicable large employer, each company must file a Form 1094-C (or a substitute statement) for its own full-time employees, using its own EIN even if the company participates in a health plan with other related companies (e.g., when the parent company sponsors a plan in which all subsidies participate).

The Form 1094-C will report the following information:

- The employer's name, address, employer identification number and contact person
- The total number of Forms 1095-C filed
- A certification by month as to whether the employer offered its full-time employees (and their dependents) the opportunity to enroll in minimum essential health coverage
- The number of full-time employees for each month of the calendar year
- The total number of employees for each month
- Whether special rules or transition relief applies to the employer
- The names and employer identification numbers of other employers that are in a controlled group or affiliated service group with the employer.[11]

Each employer that is not an applicable large employer but who sponsors a self-insured plan will file a Form 1094-B to transmit its Forms 1095-B to the IRS.[12] [13]

The Form 1094-B will report the following information:

- The employer's name, address, employer identification number and contact person
- The total number of Forms 1095-B filed.

If you have any questions about this alert, please contact one of the attorneys listed here.

Notes

1. The "responsible individual" generally is the person who enrolls one or more individuals, which may include him or herself, in minimum essential coverage.
2. It is possible to file a Form 8809 to get an automatic 30-day extension to the due date for filing Forms 1095-C, 1094-C, 1095-B and 1094-B. Note that the extension will only extend the due date for filing the returns with the IRS. It will not extend the due date for furnishing statements to recipients. Form 8809 and instructions for Form 8809 can be accessed here.
3. Special rules apply to increase the per-statement and total penalties if there is intentional disregard of the requirement to furnish an employee with a correct Form 1095-C or a responsible individual with a correct Form 1095-B.
4. For example, 40 full-time employees employed 30 or more hours per week on average plus 20 employees employed 15 hours per week on average are equivalent to 50 full-time employees.
5. Form 1095-C can be accessed here. Instructions for Form 1095-C can be accessed here.
6. An employer-sponsored plan provides minimum value if it covers at least 60 percent of the total allowed cost of benefits that are expected to be incurred under the plan. The Department of Health and Human Services (HHS) and the IRS have produced a minimum value calculator, which can be accessed here. By entering certain information about the plan, such as deductibles and co-pays, into the calculator employers can get a determination as to whether the plan provides minimum value.
7. Coverage is affordable if the employee's annual contribution for single coverage does not exceed 9.5 percent of the (1) the employee's Form W-2 amount, 9.5 percent of the employee's monthly wages, or (3) the federal poverty line for a single individual.
8. Form 1095-B can be accessed here. Instructions for Form 1095-B can be accessed here.
9. The electronic filing system for reporting to the IRS is known as the ACA Information Return (AIR) system. "Publication 5165, Guide for Electronically Filing Affordable Care Act (ACA) Information Returns (AIR) for Software Developers and Transmitters (Processing Year 2016)", which can be accessed here, specifies the communication procedures, transmission formats, business rules, and validation procedures for returns filed electronically for calendar year 2015 through the AIR system.
10. Form 1094-C can be accessed here and instructions for Form 1094-C can be accessed here.
11. An applicable large employer that, for all months of the calendar year, has offered affordable health coverage providing minimum value to at least 98% of its employees for whom it is filing a Form 1095-C employee statement, and offered minimum essential coverage to those employees' dependents, may qualify for simplified reporting procedures.
12. Instructions for Form 1094-B can be accessed here and Form 1094-B can be accessed here.
13. If an employer is not using the official IRS Form 1095-C, 1094-C, 1095-B and 1094-B, the substitute forms must conform to the requirements specified in "Publication 5223, General Rules & Specifications for Affordable Care Act Substitute Forms 1094-B, 1095-B, 1094-C, and 1095-C and Certain Other Information". IRS Publication 5223 can be accessed here.

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