

IMPORTANT YEAR-END REMINDER

10/30/2015

Practices: Employment, Labor & Benefits

If You Have 50 or More Employees (or Full-Time Equivalents) or You Are Self-Insured, You Must Report Certain Information To The IRS and Your Employees in Early 2016

Executive Summary

Recently, we conducted an informal survey of a handful of clients to confirm their preparedness for the new Affordable Care Act ("ACA") reporting requirements, which are effective in early 2016. Because many of the ACA's requirements have been delayed or revised, several clients were unsure of their reporting obligations. Therefore, we have briefly summarized the ACA reporting requirements. The new informational reports require employers to gather and report a significant amount of individual employment and coverage information that must be obtained from a variety of data sources. Due the amount of information that must gathered, collated and reported on an individual employee and employer basis and the complexity of the forms, a technology (software) solution and/or the assistance of an outside provider will likely be required. We recommend that all clients confirm their reporting obligations and ensure that the company is on track to meet them.

Reporting Requirements Summary

I. Background

Subject to certain 2015 transition relief, beginning in 2015, all employers who employ at least 50 full-time employees (or a combination of full-time and part-time employees that is equivalent to 50 full-time employees) will be subject to the ACA Employer Shared Responsibility (the "ESR") provisions under Section 4980H of the Internal Revenue Code (the "Code"). An employer that employs 50 full-time employees is referred to as an "applicable large employer" ("ALE"). It is important to note that companies with a common owner, or that are related pursuant to the rules under Section 414 of the Code (the controlled group rules), are generally combined and treated as a single employer for determining ALE status. Therefore, if the combined number of full-time employees and full-time-equivalent employees of a controlled group is large enough to meet the definition of an ALE, then each employer that is part of the group (an "ALE member") is subject to the ESR provisions of the Code, even if the employer would not, on a stand-alone basis, be an ALE.

An ALE member will be liable for an ESR payment if either (a) the ALE member does not offer health care coverage or offers health care coverage to fewer than 95% of its full-time employees and their dependents (70% in 2015), and at least one employee receives a premium tax credit to help pay for coverage on a Marketplace, or (b) the ALE member offers health care coverage to 95% of its full-time employees and their

dependents (70% in 2015) but the coverage offered is considered unaffordable to the employee or it did not provide minimum value and the employee receives a premium tax credit to help pay for coverage on a Marketplace.

Under special transition relief available for 2015, no ESR payment under section 4980H(a) or (b) will apply for any calendar month during 2015 and, if the employer has a non-calendar-year plan, will not apply for the portion of the 2015 plan year that falls in 2016, that the employer is an ALE or is part of a controlled group that had at least 50 to but fewer than 100 (50 to 99) full-time employees, including full-time equivalent employees.

In order to enforce the ESR payment provisions, ALE members are required to provide certain informational reports to the IRS and employees in early 2016.

II. Code Section 6056 Reports

Code Section 6056 requires ALEs to file new informational returns with the IRS to report health care coverage offered to full-time employees during the 2015 calendar year. These returns will be used to administer the ESR provisions under Code Section 4980H and to determine an employee's eligibility for a premium tax credit. To comply with the Code Section 6056 reporting requirements, ALEs are required to (a) provide each full-time employee with an IRS Form 1095-C no later than January 31st of each year (February 1st for 2016), and (b) file with the IRS a Transmittal Form 1094-C along with a copy of each employee's Form 1095-C no later than February 28, 2016 (March 31st if filed electronically). Like the ESR mandate, if an employer is a member of a controlled group which combined has 50 full-time employees and full-time-equivalent employees, each member of the controlled group must report separately, even if the member would not be an ALE on a stand-alone basis. Unlike the ESR mandate, there is no transition relief available for employers with 50 to 99 employees.

The reports will require ALEs to gather and report a significant amount of individual employee employment and coverage information that must be obtained from a variety of data sources (HR, benefits, payroll). Because of the complexity of the forms and the amount of information required to complete the forms, many clients have contracted with third-party providers to assist them or have acquired a technology (software) solution. Due to the demand that is being placed on these service providers, we understand that many of these providers are no longer accepting new clients or have instituted deadlines after which they will no longer accept new clients. Therefore, if you have not already done so, we urge you to take appropriate steps to ensure that you will be able to comply with the 2016 reporting requirements.

Key Takeaways for Code Section 6056: The Code Section 6056 reporting requirements (a) apply to all ALEs, whether or not the ALE offers health care coverage, and whether the coverage offered is insured or self-insured, (b) are applied on a controlled group basis and require each ALE member of a controlled group to report separately, and (c) apply to all ALEs even if the ALE is not subject to the ESR mandate in 2015 under special 2015 transition relief.

III. Code Section 6055 Reports

Code Section 6055 requires all health insurance issuers (insurance companies) and all employers who sponsor self-insured group health plans to file new informational returns confirming whether or not they

provided minimum essential coverage ("MEC") to employees during the 2015 calendar year. Regardless of an employer's size, fully-insured group health plans and self-insured group health plans must report information to the IRS and to full-time employees related to MEC. If the employer's group health plan is fully-insured by an insurance company, the insurance company is responsible for complying with the Code Section 6056 reporting requirements. However, if the group health plan is self-insured, the employer/sponsor is responsible for these reporting requirements.

Sponsors of self-insured plans that are ALEs may use IRS Form 1095-C to report information to employees and transmittal Form 1094-C to report information to the IRS. To meet their reporting requirements, self-insured employers who are not ALEs and employers that provide coverage to non-employees will report information using IRS Forms 1094-B (IRS transmittal form) and 1095-B (return). The returns and transmittal form must be filed with the IRS on or before February 28 (March 31 if filed electronically) of the year following the calendar year of coverage.

Key Takeaways for Code Section 6055: The Code Section 6055 reporting requirements (a) apply to both insured and self-insured plans, (b) apply to all employers that sponsor a self-insured plan whether or not the employer is an ALE and subject to the ESR mandate, and (c) require that reports be provided to all employees or other persons enrolled in MEC (full-time employee, part-time employees and non-employees).

IV. Reporting Penalties

The penalties for failure to comply with the reporting requirements under Code Section 6055 and 6056 are governed by Code Section 6721 and Code Section 6722. An ALE that fails to file the required returns may be subject to the following reporting penalties:

- The penalty for failure to file an informational return with the IRS 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 for non-willful failures.
- The penalty for failure to provide employee's their returns is also \$250 for each return for which such failure occurs. The total penalty imposed for all such failures during a calendar year cannot exceed \$3,000,000 for non-willful failures.

For the initial returns filed in 2016, the IRS will not impose penalties if an employer can show that it made good faith efforts to comply with its reporting obligations. However, the relief is only provided for incorrect or incomplete information. The IRS will not provide any penalty relief for employers that fail to make a good faith effort to file complete returns or who simply fail to provide the IRS and/or employees with the applicable informational return.

V. Employers Should Consider The Following

- If an employer has fewer than 50 full-time employees (including full-time equivalent employees), the ESR mandate does not apply. However, in determining the number of full-time employees for purposes of the ESR mandate, all employees of a controlled group are combined. Thus, if the combined number of full-time employees and full-time-equivalent employees for the controlled group is 50 or more, then each employer that is part of the group is subject to both the ESR mandate and the reporting provisions. **Recommended**

Action: Confirm again that your company employs fewer than 50 full-time employees (including full-time equivalent employees) and, in making that determination, determine whether your company is a member of a controlled group of corporations and, if so, look at the combined number of full-time employees to determine your status as an ALE.

- For 2015, if an employer had between 50-99 full-time employees (including full-time equivalent employees), the ESR mandate and penalties do not apply under special one-time 2015 transition relief. However, employers of 50-99 employee must still comply with the reporting requirements under Code Section 6056 summarized above and Code Section 6055 (if the group health plan is self-insured). After 2016 the special transition relief will expire and these employers will be subject to the ESR mandate and penalties, and will continue to be subject to the reporting requirements under Code Section 6056 and Code Section 6055 (if the group health plan is self-insured). **Recommended Action:** Confirm that your company is prepared to complete the information returns that are required under Code Section 6056 (and 6055 if the group health plan is self-insured).
- For 2015, if an employer had 100 or more full-time employees (including full-time equivalent employees), the ESR mandate, the reporting requirements under Section 6056 and the reporting requirements under Code Section 6055 (if the group health plan is self-insured), as well as the penalties for failure to comply as mentioned above will all apply to the employer and to each member of the controlled group of corporations (if applicable). **Recommended Action:** Confirm that your company is prepared to complete the information returns that are required under Code Section 6056 (and 6055 if the group health plan is self-insured).

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