EMPLOYER REGULATION UNDER THE AFFORDABLE CARE ACT

Employer Penalties and Reporting Issues

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October 15, 2015
Agenda

- **Why?** Background on the Individual Mandate and the Employer Penalty

- **What?** Overview of Reporting Requirements
  - Employer Reporting under IRC §6056
  - Group Health Plan Reporting under IRC §6055

- **When?** Deadlines for the First Round and Beyond

- **How?** Completing the Forms: Regular Reporting and Alternative Reporting Methods
Reporting Required for Administration of...

- Employer Shared Responsibility Penalty
- Individual Shared Responsibility Penalty
- Premium Assistance Tax Credits for Exchange/Marketplace Plans
Individual Mandate
Effective 2014

- Individuals must be covered under *minimum essential* health coverage (including employer-sponsored coverage) or pay a penalty
  - Penalty is the *greater of*:
    - 2014: $95 per adult or 1% of income
    - 2015: $325 per adult or 2% of income
    - 2016: $695 per adult or 2.5% of income
    (dollar amount is indexed after 2016)
  - No penalty if:
    - Cost of coverage exceeds 8% of household income
    - Coverage lapses of less than 3 months
    - Income is below income tax filing threshold
    - Native American

- Individual penalty paid when federal taxes paid
Applies to **large employers**—50 or more full-time employees (including equivalents)
- Transition rule delays application to certain employers with 50 – 99 full-time employees until 2016

Full time = 30 or more **hours of service** per week (130 hours per month)

Penalty triggered when a full-time employee receives a federal subsidy in a public Marketplace/Exchange (i.e., a premium assistance tax credit)
All employees of a controlled group or an affiliated service group are taken into account in determining whether the employer has 50 or more full-time employees, including FTEs

But each employer-member of the group is treated separately for purposes of penalties and reporting obligations
A. If a large employer does not offer “minimum essential coverage” to at least 95%* of its full-time employees (and dependent children under age 26) and if one full-time employee receives subsidized coverage on the Exchange:

**Penalty is $2,000** (annualized) times the total # of full-time employees (minus first 80 workers in 2015; thereafter minus 30)

B. If a large employer does offer coverage to 95%* of its full-time employees (and dependent children under 26), but the coverage is either:

- Not affordable; or
- Not of minimum value

and one full-time employee receives federally subsidized coverage in the Exchange:

**Penalty is $3,000** (annualized) times the # of full-time employees getting a tax credit in an Exchange (subject to a penalty maximum)

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* Under a transition rule for 2015, employers must offer coverage to at least 70% of full-time employees.
To Avoid/Minimize Employer Penalty

Employer must offer coverage to full-time employees:

1. **Minimum Value**
   - 60%

2. **Affordable Coverage**
   - Employee cost cannot exceed 9.5% of household income (safe harbors apply)

3. **Coverage for Dependent Children**
   - Up to the end of the month in which they turn 26
Who is a Full-Time Employee?

When is an individual a “full-time employee”?

- **A Full-time employee** is one who works or is credited with 30 “hours of service” per week with an employer, on average
  - 130 hours of service in a calendar month is considered the monthly equivalent of 30 hours per week

- In general, if the employer reasonably expects an employee to be a full-time employee when the employee begins work, that employee must be offered coverage effective no later than the first day of the 4th calendar month

Examples:
- January 1 start date → coverage by April 1
- January 15 start date → coverage by May 1
**What are Hours of Service?**

**Hours of service** include both hours paid based on performance of duties as well as paid time for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leaves of absence.

- For hourly employees, use actual records of hours worked/credited.
- For non-hourly employees, use one of the following methods:
  1. Actual hours of service worked/credited.
  2. Days-worked equivalency: credit employee with 8 hours of service for each day in which at least 1 hour was worked/credited.
  3. Weeks-worked equivalency: credit employee with 40 hours of service for each week in which at least 1 hour was worked/credited.
    - Anti-abuse rule: Use of an equivalency method not allowed if it would understate employee hours.

**Hours of service exclude:**

- Hours of service worked outside the United States (where compensation is from sources outside the U.S.).
- Bona fide volunteers.
- Work-study programs.
Measurement Methods

The final regulations provide two measurement methods for determining whether an employee is a full-time employee for purposes of calculating penalties:

- Monthly Measurement Method
- Look-back Measurement Method
Monthly Measurement Method

Employer determines each employee’s status as a full-time employee by counting the employee’s hours of service each month.
Look-Back Measurement Method

- Employers determine the full-time status of employees at end of a measurement period and then employees retain their status (full-time or not full-time) during a subsequent stability period.

- Optional administrative period between measurement and stability periods.

- Two kinds of measurement periods:
  1. Standard periods for ongoing employees.
  2. Initial measurement periods for new employees in certain categories only (part-time, variable-hour, and seasonal).
     - Employees are not required to be given offers of coverage during initial measurement periods, but must be offered at start of stability period.
     - This period is called a limited non-assessment period.

- For large employer reporting under section 6056, reporting should reflect the employee’s full-time (or not full-time) status during the stability period.
Consistency Standard

Employer may choose to use different measurement methods (i.e., monthly or look-back), or use different lengths or start/end dates for measurement and stability periods only based on these categories:

- Each group of collectively bargained employees covered by a separate collective bargaining agreement
- Collectively bargained and non-collectively bargained employees
- Salaried and hourly employees
- Employees working in different States

The determination must be made on a uniform and consistent basis for all employees in the same category; employer may change these periods on prospective basis.
A large contributing employer is treated as offering coverage to an employee if:

- The employer is required by a collective bargaining agreement or participation agreement to make contributions to a multiemployer plan,
- The multiemployer plan offers coverage to individuals who meet the plan’s eligibility conditions, and
- The coverage is affordable and provides minimum value, and is offered to dependent children under 26
- Rule applies regardless of whether the participant has earned coverage

Employer determines whether an employee is a full-time employee by looking at hours worked for that contributing employer (not for all contributing employers combined)

Rule is effective until future guidance issued (and future guidance would be prospective only)
What Large Contributing Employers Need to Know

What information do employers need from the plan administrator to assure that multiemployer plans meet the criteria?

- Does the plan meet the minimum value standard?
- Is the plan affordable?
- Does the plan cover dependents through the end of the month in which they turn 26?
ACA Reporting Obligations

Plan Reporting
Form 1094-B and 1095-B

All plans that provide minimum essential coverage must:
- Submit annual report to IRS
- Provide annual statement to plan participants

Employer Reporting
Form 1094-C and 1095-C

Large employers (those with 50 or more full-time employees, including FTEs) must:
- Submit annual report to IRS
- Provide annual statement to full-time employees
ACA Reporting Obligations

Plan Reporting

Reporting must be done on IRS Forms 1094-B (transmittal) and 1095-B (participant statement) on or before **February 28** (or **March 31** if filed electronically) of the year following the calendar year in which the coverage was provided:

- Statements to participants due by **January 31** (in 2016, by February 1, because January 31 falls on a Sunday)

Large Employer Reporting

Reporting must be done on IRS Forms 1094-C (transmittal) and 1095-C (employee statement) on or before **February 28** (or **March 31** if filed electronically) of the year following the calendar year to which the return relates:

- Statements to employees due by **January 31** (in 2016, by February 1 because January 31 falls on a Sunday)

Special Rule for Self-Insured Single Employer Plans: Self-insured employers will file a single reporting form (Form 1095-C), completing two sections to report required information for large employers and plans
Social Security Number Collection

➢ The plan must report the SSN for each enrolled individual (including dependents)

➢ Notice 2015-68 states that pending additional guidance, reporting entities will not be subject to penalties for failing to report SSNs if they request them as follows:
  • The first request (called a “solicitation”) is made when the individual first enrolls in the plan. For individuals already enrolled on September 17, 2015, the first request must be made during the next open season
  • The second request must be made at a reasonable time after the first one
  • The third request must be made by December 31 of the year following the first request

➢ When SSNs are not provided or do not exist (e.g., for a newborn) the reporting entity reports the individual’s date of birth instead of SSN
Form 1095-B

This form is sent by the plan to each plan participant. It tells them about their coverage, so they can tell the IRS that they are covered by a health plan. That way, they do not get penalized for not having health coverage.

![Form 1095-B Image]
Form 1094-B

Plans will send this transmittal form to the IRS, with copies of the Forms 1095-B sent to each plan participant.
Form 1095-C

This form is completed by the large employer, and is sent to each full-time employee (with copy to IRS).
Form 1094-C

Large employers will send this transmittal form to the IRS, with copies of the Forms 1095-C sent to employees. Below is page 1 of 3.

Form 1094-C

Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

Information about Form 1094-C and its separate instructions is at www.irs.gov/form1094c

<table>
<thead>
<tr>
<th>Part I</th>
<th>Applicable Large Employer Member (ALE Member)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Name of ALE Member (Employer)</td>
<td>2. Employer identification number (EIN)</td>
</tr>
<tr>
<td>3. Street address (including room or suite no.)</td>
<td></td>
</tr>
<tr>
<td>4. City or town</td>
<td>5. State or province</td>
</tr>
<tr>
<td>6. Country and ZIP or foreign postal code</td>
<td></td>
</tr>
<tr>
<td>7. Name of person to contact</td>
<td>8. Contact telephone number</td>
</tr>
<tr>
<td>9. Name of Designated Government Entity (only if applicable)</td>
<td>10. Employer identification number (EIN)</td>
</tr>
<tr>
<td>11. Street address (including room or suite no.)</td>
<td></td>
</tr>
<tr>
<td>12. City or town</td>
<td>13. State or province</td>
</tr>
<tr>
<td>14. Country and ZIP or foreign postal code</td>
<td></td>
</tr>
<tr>
<td>15. Name of person to contact</td>
<td>16. Contact telephone number</td>
</tr>
<tr>
<td>17. Reserved</td>
<td></td>
</tr>
<tr>
<td>18. Total number of Forms 1095-C submitted with this transmittal</td>
<td></td>
</tr>
<tr>
<td>19. Is this the authoritative transmittal for this ALE Member? If &quot;Yes,&quot; check the box and continue. If &quot;No,&quot; see instructions</td>
<td></td>
</tr>
</tbody>
</table>

Part II | ALE Member Information

| 20. Total number of Forms 1095-C filed by and/or on behalf of ALE Member | |
| 21. Is ALE Member a member of an Aggregated ALE Group? | Yes | No |
| 22. Certifications of Eligibility (select all that apply): | |

A. Qualifying Offer Method B. Qualifying Offer Method Transition Relief C. Section 13302H Transition Relief D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature

Date

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 1591A Form 1094-C (2015)

For Official Use Only

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Segal Consulting
Multiemployer/Contributing Employer Rule

- Contributing employers do not need data concerning participant eligibility.
- Contributing employers should complete the Form 1095-C for any full-time employee.

### Line 14 – Offer of Coverage
- For any month for which they enter code 2E on Line 16, enter code 1H on Line 14.

### Line 15 – Employee Share of Premium for Lowest Cost Plan for Self-Only Coverage
- Leave blank.

### Line 16 – Applicable Section 4980H Safe Harbor Codes and Other Relief for Employers
- Code 2E if using multiemployer rule.
Enter code 1H for any month for which the employer enters code 2E on Line 16 (indicating that the employer was required to contribute to a multiemployer plan on behalf of the employee for that month and therefore is eligible for multiemployer interim rule relief).
Form 1095-C, Part II: Employee Offer of Coverage (Line 15)

Leave blank when employer enters code 1H in Line 14.
Form 1095-C 4980H Safe Harbor & Other Relief (Line 16) Indicator Codes

Code for Multiemployer Interim Rule Relief – 2E.

Contributing employer enters 2E for all months employer is required to contribute to the plan. (Use 2E even if 2C, 2D, 2F, 2G or 2H also apply.)
## Allocation of Responsibility

<table>
<thead>
<tr>
<th>Employer Type</th>
<th>Plan Type</th>
<th>Employer Reporting</th>
<th>Plan Reporting</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Large employer</strong> (including each member of a controlled group)</td>
<td>Self-insured plan</td>
<td>Employer (Forms 1095-C, Parts I &amp; II and 1094-C)</td>
<td>Employer (complete Part III of the 1095-C)</td>
</tr>
<tr>
<td></td>
<td>Insured group health plan</td>
<td>Employer (Forms 1095-C, Parts I &amp; II and 1094-C)</td>
<td>Health insurer (Form 1095-B and 1094-B)</td>
</tr>
<tr>
<td></td>
<td>Contributes to multiemployer plan</td>
<td>Employer (Forms 1095-C, Parts I &amp; II and 1094-C)</td>
<td>Multiemployer plan (if self-insured) or Insurer (if insured) (Form 1095-B and 1094-B)</td>
</tr>
<tr>
<td><strong>Small employer</strong> (not part of a controlled group)</td>
<td>Self-insured plan</td>
<td>Not applicable</td>
<td>Employer (Form 1095-B and 1094-B)</td>
</tr>
<tr>
<td></td>
<td>Insured group health plan</td>
<td>Not applicable</td>
<td>Health insurer (Form 1095-B and 1094-B)</td>
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Delivery Method for Plan Reporting

- Mail to participant at last known permanent address, or if no known permanent address, the participant’s temporary address
- Can electronically distribute **ONLY IF** affirmative consent received
- Hand delivery is permitted
Penalties for 6055/6056 Reporting Failures

- Generally, reporting entities that fail to comply with sections 6055 and 6056 are subject to the general reporting penalty provisions in sections 6721 and 6722.

- The IRS will not impose penalties under these sections on entities that can show they made good faith efforts to comply with the information reporting requirements.
  - Good faith requires timely filing of returns/statements.

- Limited relief from penalties is provided for returns and statements filed in 2016 to report offers of coverage in 2015, but only for incorrect or incomplete information.

- No relief is provided if there is no good faith or for failure to timely file a return or statement.

Note: Public Law 114-27 (enacted June 29, 2015) increased the penalties significantly. Per-return penalty of $100 increased to $250; yearly max of $1.5 million for all failures increased to $3 million.
Getting Help with Reporting

- Start with existing payroll or benefits administration service providers.
- If using software provided by third-party to handle benefits administration in-house, talk to those software developers.
- If these service providers cannot provide needed capability, look at new companies offering these services to plans and employers.
Practical Experience

How do plan sponsors communicate with contributing employers about reporting obligations?
Legislative Activity on Excise Tax

➢ U.S. House of Representatives

- **The Middle Class Health Care Tax Repeal Act (H.R. 2050)**, sponsored by Rep. Joe Courtney (D-CT)
- **Ax the Tax on Middle Class Americans' Health Plans Act (H.R. 879)** sponsored by Rep. Frank Guinta (R-NH)
  - The Guinta bill has only Republican co-sponsors; the Courtney bill has bi-partisan sponsors; Together, the number of co-sponsors of the bills is more than a majority of House members
  - The only substantive difference is that the Courtney bill retains the W-2 reporting requirement for health coverage and the Guinta bill does not. Neither bill has a revenue offset

➢ U.S. Senate

- Senators Dean Heller (R-NV) and Martin Heinrich (D-NM) introduced full repeal bill on September 17, 2015, the **Middle Class Health Benefits Tax Repeal Act of 2015**
- Senator Sherrod Brown (D-OH) introduced full repeal bill on September 24, 2015, the **American Worker Health Care Tax Relief Act of 2015** (S. 2075) with 10 Democratic and 1 Independent co-sponsors
  - The Brown bill includes a sense of the Senate regarding revenue offsets for repeal, stating that “the revenue loss resulting from the repeal of the excise tax on high cost employer-sponsored coverage under section 4980I of Internal Revenue Code should be offset to ensure that the [ACA] continues to reduce the deficit while improving coverage for millions of Americans"
Form Websites

Questions