

Compliance Update, February 2018

IRS FORMS 1094 AND 1095 DUE DATE FAST APPROACHING

The individual mandate is going away next year but the employer mandate remains in effect and ACA reporting requirements are intact. This means the deadline for submitting the forms to the IRS is February 28, 2018, if the forms are being submitted in paper format and April 2, 2018, if the forms are being submitted electronically. The deadline for providing the IRS Forms 1095 to the employees is March 2, 2018.

[ACA Reporting Deadline Extended Again
Good Faith Efforts Standard Still Applies
IRS Q and A on Reporting Requirements](#)

The employer can receive an automatic 30-day extension for submitting the forms to the IRS by filing IRS Form 8809. However, there is no extension available for providing the forms to the employees.

The following is a detailed video on the forms and how to complete them. I believe this is the first time I have included a video in a newsletter.

[IRS Reporting 6056 Webinar](#)

Employers should be familiar with the forms by now. Clearly the Trump administration wants to repeal Obamacare but until the statute is actually repealed by Congress it remains the law of the land and employers should be prepared to comply with the reporting requirements.

CREDITABLE COVER NOTICE TO GOVERNMENT DUE DATE

Employers are required to notify the government whether or not the employer's group health plan is considered creditable for purposes of Medicare Part D. The Medicare Part D program is the prescription drug benefits under Medicare.

[Creditable Coverage Disclosures to CMS Due March 1](#)

The notice is due 60 days after the start of each plan year. This means employers maintaining calendar year health plans have to comply by March 1, 2018. Employers have to submit the information electronically through the government's website. This requirement has been in place several years.

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION UPDATES

It is a new year and this article talks about changes for this year on a variety of topics. It is not limited to just “welfare benefit” and you should at least scan it to see if anything impacts your organization.

[Executive Compensation and Benefits](#)

This article is prepared by a major law firm and does a nice job of touching on the highpoints of a number of important topics.

NEW CLAIMS PROCEDURES FOR DISABILITY CLAIMS

The Department of Labor has issued new rules governing the procedures applicable to disability claims.

[Final Rule on Disability Claims Procedures](#) [New Disability Rules Take Effect in April](#) [Significant Changes to Disability Claims Rules](#)

The new rules apply to claims filed on or after April 1, 2018. Note that the rules apply to any plan that conditions benefits on the person’s disability.

NONCOMPLIANCE PENALTIES INCREASE

There are penalties for failing to comply with various rules and most of the statutes allow for inflationary increases each year. This article lists the current maximums.

[DOL Increases Civil Penalty Amounts](#)

It is rare for the government to impose the maximum penalty but that is no excuse not to comply. That is, the government has the authority to access the amounts listed in this article but more often than not, a lesser amount is actually imposed. Nevertheless, no one wants to pay any penalty so it is best to comply with all the rules.

SMALL EMPLOYERS CAN REIMBURSE EMPLOYEES FOR INDIVIDUAL HEALTH POLICIES

One of the last things President Obama did was to change the rules to allow small employers (i.e. those with fewer than 50 full-time and full-time equivalent employees) to reimburse employees the cost of their individual health policies.

[New Guidance for Qualified Small Employers and HRAs](#) [Summary of QSEHRAs](#)

The IRS recently issued additional rules governing such programs. That is, the small employer must comply with various rules including notice requirements if the employer wants to offer this type of program.

MEWA – NOT ME!!

A MEWA is a multiple employer welfare arrangement. This is any health plan covering employees working for two or more unrelated employers. If the employers are members of a control group, they are considered a single employer and the health plan is not a MEWA.

[Avoiding the Accidental MEWA](#)

However, it is possible for an employer to inadvertently create a MEWA. For example, the employer may offer its health plan to independent contractors or non-employee directors. This article talks about situations those types of situations.

TAX REFORM CHANGES

The Trump administration and Republican-controlled Congress continue to nibble away at the prior administration's accomplishments and positions.

[Tax Reform Impact on Fringe Benefits](#)

This article talks about the changes in the recent tax law impacting certain employee benefits.

TAX DELAYS UNDER OBAMACARE

It is no secret the Trump administration is anti-Obamacare and the administration and Congress are working together to modify some of the rules. Congress approved and President Trump signed a short-term spending bill that ended the government shutdown through February 8, 2018. The bill delayed the Cadillac tax for another two years (i.e. until 2022) and suspended the health insurance tax or HIT for 2019.

[Cadillac Tax Delayed, CHIP extended](#) [Cadillac Tax Delayed Until 2022](#) [Health Insurance Tax Moratorium in 2019](#)

Note the HIT is in effect this year. It was suspended in 2017 and will be suspended for 2019 but is in effect this year. The logic behind this is that the carriers factored in the tax when developing the rates for this year. So, according to the government, suspending the HIT this year would create a windfall for the carriers. The continuing resolution also funded the Children's Health Insurance Program aka CHIP for an additional six years.

HIPAA BREACH REPORTING DEADLINE

Covered entities are required to report HIPAA breaches to the U.S. Department of Human Rights Office of Civil Rights.

[HIPAA Breach Reporting Deadline Looms](#)

If the breach involved 500 or more individuals the government has to be notified within 60 days of the event. If the breach involved fewer than 500 individuals the notification for 2017 is due the end of this month. Hopefully no one has to comply with these notification requirements.

WELLNESS PROGRAM UNCERTAINTIES REMAIN

The rules governing wellness programs have been around for some time. First, there was HIPAA that regulated wellness programs. Then the government issued rules under the ADA (i.e. the Americans with Disabilities Act) and GINA (i.e. the Genetic Information Nondiscrimination Act) that the EEOC used to regulate wellness programs. The restrictions under HIPAA were different than those under the ADA. Some employers adopted wellness programs that complied with HIPAA but not with the ADA rules.

[2017 Ruling Could Impact 2019 Wellness Plans](#) [Status of ADA and GINA Wellness Regulations](#)

The EEOC filed suit and the Court ruled in favor of the employer. The Court said the EEOC has until January 1, 2019, to issue new regulations. The EEOC said it would issue the rules in August of this year but until then the EEOC's current rules remain in effect.

NEW TAX CREDIT FOR PAID LEAVE

President Clinton signed the Family and Medical Leave Act back in the '90s. That statute requires larger employers to provide certain employees up to 12 weeks of **unpaid** leave under certain circumstances. The tax reform law that President Trump signed in December provides a tax credit for certain **paid** leaves.

[Tax Credit for Paid FMLA](#) [New Incentives for Employers to Provide Paid FMLA](#)

To be eligible for the tax credit the employer must pay the employee at least 50% of his or her normal wages under the leave program. The maximum credit is between 12.5% and 25% of the wages paid and depends upon the percentage of wages paid to the employee while out on leave.

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