

## OCTOBER 2018 COMPLIANCE UPDATE

### MEDICARE PART D NOTICES

There are two Medicare Part D Notice requirements. Medicare Part D is the prescription drug benefits under Medicare. There are two notices. One goes to the employees and the other goes to the government. There is some confusion regarding the notices to employees. Everyone says this notice has to be distributed by October 15, which is the start of the annual open enrollment period. However, the rules say the notice has to be given each year prior to October 15. So if the notice is included in the employer's group health plan enrollment materials each year at the same time, the employer is complying with the notice requirement.

[Part D notice required before October 15](#)

[Be safe; provide notice to all employees](#)

[Provide notices of creditable or non-creditable coverage by October 14](#)

There are no statutory penalties for failing to comply but that is certainly no reason to ignore the requirement. Also, failure to properly notify the people can result in them having to pay higher premiums when they actually enroll in Medicare Part D. So you should make every effort to comply with the Medicare Part D Notice rules.

The notice regarding the employer's group health plan's status (i.e. Creditable Coverage or Non-Creditable Coverage) to the government is due sixty days after the start of every plan year and must be filed electronically from the government's website.

### FIDELITY INSURANCE

ERISA requires anyone "handling" funds have a fidelity bond. A fidelity bond protects the plan if funds are stolen. Although not required, it makes sense to also have fidelity insurance. Again, fidelity insurance is not the same as a fidelity bond.

[ERISA fiduciary insurance](#)

As a practical matter, the issue regarding fidelity bonds and fidelity insurance is that, in the context of welfare benefit plans like group health plan, assets do not accumulate like they do in retirement plans. In other words, the rules governing fidelity bonds and fidelity insurance are important but probably have more applicability to retirement plans than welfare benefit plans.

## **EMPLOYEES' SHARE OF PREMIUMS CONTINUES TO INCREASE**

This survey says that employers are passing along a bigger percentage of the health plan premiums to the employees.

[Employees' share of health care costs outpaces wages](#)

Not surprisingly employers continue to look to ways to help control costs and one of the most direct ways is to have the employees pay a larger percentage of the premiums.

## **HEALTH PLAN TRENDS**

People continue to look for the silver bullet to control health care costs but as history has proven there is no simple solution.

[Health plan trends for cost control](#)

This is a nice article on various trends including plan design modifications and other steps employers are taking to help control costs.

## **ACA COMPLIANCE IS STILL A CONCERN**

It is clear the Trump administration is no fan of the Affordable Care Act, or Obamacare, but the statute still is the law of the land. As a result, employers must comply, and this is a major concern.

[ACA compliance issues](#)

Even though the current administration would like to completely repeal the law, the Trump administration has started taking steps to enforce the employer mandate. Therefore, employers need to be diligent and should begin preparing for the reporting requirements.

## **IRS ISSUES ACA REPORTING FORMS + BAD ADVICE CAN CAUSE HEADACHES**

The IRS issued Form 1094 and Form 1095 that employers will use to comply with the 2018 ACA reporting requirements.

[IRS releasing early drafts of employer reporting forms](#)

I think most employers want to comply with the law but the rules are so complicated, mistakes happen all the time.

[Employers get inaccurate advice](#)

A majority of employers use outside consultants to help. However, mistakes still happen. The two most common errors are (1) the payroll vendor offered to provide ACA reporting to an existing client, but the payroll company did not realize it may not store all the proper data needed to complete all the requirements and underestimated how complicated the Forms 1094-C and 1095-C were to complete accurately, and (2) fully insured employers were under the impression or were advised that an insurance carrier would provide ACA reporting on their behalf using the Forms 1094-B and 1095-B.

### **SEVERANCE PAY AND GETTING SUED**

Employers oftentimes offer a former employee a severance package. Most agreements have a provision saying the employee will not sue the employer.

[Ruling says employees can keep severance, file suit](#)

Unfortunately from the employer's prospective, a recent Sixth Circuit case (Ohio is in the Sixth Circuit) said that a former employee that signed a severance agreement could sue the employer and keep the severance payment!

### **HSA – Q AND AS**

Health savings accounts have been around for a while and are a pretty popular option for both the employer and employees.

[HSA frequently asked questions and answers](#)

This is a four-page article you may want to hand out to your employees if you are sponsoring a high deductible health plan with HSAs.

### **4TH QUARTER NOTICE REQUIREMENTS**

This chart lists upcoming notice requirements for the rest of this year. It is a handy chart to ensure you do not overlook something.

[4th quarter compliance deadlines](#)

Obviously you will have to dig deeper for each notice but this short chart at least gives you a “heads up” on the various notices.

### **UPDATED ACA AND OTHER LIMITATION NUMBERS**

The Affordable Care Act imposes a number of penalties and other limitations on employers, and the statute provides that those numbers can be adjusted each year.

[ACA numbers chart](#)

This one-page chart lists the historical numbers plus the numbers for next year. It is really helpful and you should take a minute to review the numbers.

**UPDATED MARKETPLACE NOTICE**

One of the requirements under the Affordable Care Act is that employers tell new hires about the health care exchanges or marketplaces. The government has provided a template that employers can use, and that notice has been updated.

[Heading into open enrollment: Things to consider](#)

This article talks about that notice and other topics to consider during the upcoming open enrollment period.

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