

EMPLOYEE BENEFITS ALERT

HEALTH CARE REFORM'S FORM W-2 REPORTING GUIDANCE

Beginning with the 2012 Form W-2 (which is furnished to participants in January 2013), most employers will have to report the cost of group health coverage provided to their employees. The IRS has recently issued new guidance in Notice 2011-28 regarding this obligation which is summarized below.

1. Who is required to comply with the regulations?

The law requires most private employers, public employers such as federal, state and local governmental entities, churches and other religious organizations to report the cost of employer-sponsored health coverage.

However, the following entities are not subject to the reporting requirement:

- Small employers who are required to file fewer than 250 Form W-2s for the preceding calendar year (exempted until at least 2014 and until further guidance is issued);
- Federally-recognized Indian tribal governments; and
- Employers who only contribute to multi-employer plans.

2. What is the purpose of the reporting requirement?

The reporting is meant to provide employees information about the cost of their health care benefits. The reporting requirement does not cause the employer-sponsored health care benefits to become taxable to employees.

3. When are employers required to comply with these requirements?

The reporting requirement has been delayed until employers distribute the 2012 Form W-2s. Although employees who terminate their employment before the end of 2012 may request an early Form W-2, employers are not required to report health coverage costs on these early W-2s.

4. What types of coverage are reported?

Subject to the exclusions listed below, employers must report the cost of coverage for the group health plan benefits they make available to their employees. This includes the costs of many employer sponsored group health plans, but excludes costs for:

- Health reimbursement arrangements;
- Stand-alone dental and vision plans that are not otherwise integrated or incorporated into a comprehensive medical plan;
- Accident and disability coverage;
- Long-term care coverage;
- Liability insurance and workers' compensation insurance;
- Specified disease (*e.g.*, cancer coverage) and certain hospitality indemnity plans;
- Amounts contributed to health savings accounts or Archer-MSAs; and
- Employee contributions to health flexible spending accounts offered through a cafeteria plan.

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5. What amount should be reported?

The amount reported on the Form W-2 includes both employer and employee contributions toward the cost of coverage, regardless of whether the employee paid for his or her portion through pre-tax or after-tax contributions. Fully-insured plans report the premium charged by the carrier for coverage. For self-insured plans, the amount reported is the 100 percent COBRA premium (that is, the full COBRA premium, less the 2 percent COBRA administration fee). If an employer subsidizes the COBRA premium, the employer should report the 100 percent COBRA premium.

6. Where is the amount reported?

The amount is reported on Form W-2, box 12, using Code "DD." No amount is required to be reported on Form W-3. Furthermore, there is no reporting obligation if the employer is not otherwise required to file a Form W-2 on behalf of any individual (such as for a retiree or former employee).

7. What actions should employers take now?

The IRS Notice requests comments and it is quite possible that additional changes to these regulations will be implemented. However, any changes will apply only on a prospective basis. For this reason, employers should immediately work with their payroll providers to begin establishing the infrastructure to calculate the reportable cost.

8. What are the penalties for noncompliance?

Employers who do not timely comply with the regulations will be subject to a penalty of \$200 per Form W-2, capped at \$3 million per employer.

*The Employee Benefits Alert is intended to keep readers current on matters affecting employee benefits and is not intended to be legal advice. If you have any questions about this alert or any other issues relating to employee benefits, please contact **Kathryn English** at 412.566.1226, **Michael Herzog** at 412.566.6130, **Malgorzata (Gosia) Kosturek** at 412.566.6180, **Sandra Mihok** at 412.566.1903, **Brandon Richards** at 412.566.1263, or **Paul Yenerall** at 412.566.1944.*