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W-2 Reporting Obligations

Among the many new requirements under the Affordable Care Act (ACA) is the duty of employers to report on the employee's Form W-2 the aggregate cost of health care coverage. The Internal Revenue Service (IRS) recently issued Notice 2011-28 to provide guidance for this reporting obligation.

Reporting on Form W-2

This reporting obligation is only to inform employees about the cost of the health care coverage being provided and does not change the amount of the employee's taxable income. This information about the "aggregate reportable cost" of the health care provided will be required to be included on the 2012 W-2s – *i.e.*, those which are to be provided to employees in January of 2013 -- but employers can choose to report this information on the 2011 W-2 forms – *i.e.*, those to be provided in January of 2012.

- This cost item is to be reported on Form W-2, in box 12, using code DD.
- This cost information need not be provided to any employee to whom the employer is not required to furnish a Form W-2.
- This cost information need not be provided to any employee terminated mid-year, who requests a Form W-2 be provided before the following January 31st.

Which Employers Must Comply?

This reporting obligation applies to all employers, including federal, state and local governments, churches and other religious organizations, and small employers who are not subject to COBRA. Employers are not subject to this requirement if they were required to file fewer than 250 Form W-2s during the preceding calendar year.

What Costs Must be Reported?

The cost to be reported is the aggregate cost for "applicable employer-sponsored coverage."

- This cost is to be determined using any of the approved methodologies for determining the applicable premium cost to the employee of COBRA continuation coverage, without the added 2% for administration.
- The methodology used need not be the same for all of the employer's health care plans, but a single methodology must be used and consistently applied with respect to each plan.

- This cost includes the aggregate cost of coverage (i) under all the employer's health care plans, (ii) the share of the cost paid by both the employer and employee, regardless of whether the employee's share was paid pre-tax or post-tax, and (iii) the cost of coverage for the employee's dependents.
- If the costs of coverage increase or decrease during the course of the calendar year, the change must be reflected in the aggregate reportable cost on the Form W-2.
- The aggregate reportable cost must be determined on a calendar year basis.
- For employees terminating mid-year, the cost can be calculated based on the cost of coverage (i) while they were active employees or (ii) while they were active employees plus the cost of continuation coverage for the remainder of that calendar year, but the same calculation must be uniformly applied to all employees.

What Costs Do Not Need to Be Reported?

"Applicable employer-sponsored coverage" does not include (and thus costs for these coverages need not be reported):

- coverage for long-term care
- coverage for accident or disability income insurance, or any combination of these
- coverage issued as a supplement to liability insurance
- liability insurance, including automobile liability insurance
- workers' compensation or similar insurance
- automobile medical insurance
- credit-only insurance
- limited-scope dental or vision benefits
- coverage for only specific diseases
- hospital indemnity or other fixed indemnity insurance

The following amounts need not be included when determining the "aggregate reportable cost:"

- amounts contributed to an Archer MSA
- amounts contributed to a health savings account
- salary reduction amounts contributed to a health care flexible spending account (FSA), though any amounts available under a health care FSA in excess of salary reduction amounts would have to be included

- amounts contributed to a health reimbursement arrangement
- amounts contributed to a multiemployer health and welfare fund
- the cost of coverage under a self-insured group health plan that is not subject to COBRA continuation requirements
- the cost of coverage provided for members of the military or their families
- amounts that become taxable to highly compensated individuals for violations of Code § 105(h)

Action Steps

Though this obligation may seem far down the road, it will come more quickly than it seems. Employers should consult with their insurers and/or third party administrator about calculating the appropriate amounts, and be sure that their payroll departments understand this guidance.

If you have questions about the reporting obligations, or about any other aspect of complying with the ACA, please contact either of the Honigman attorneys listed on this Alert.