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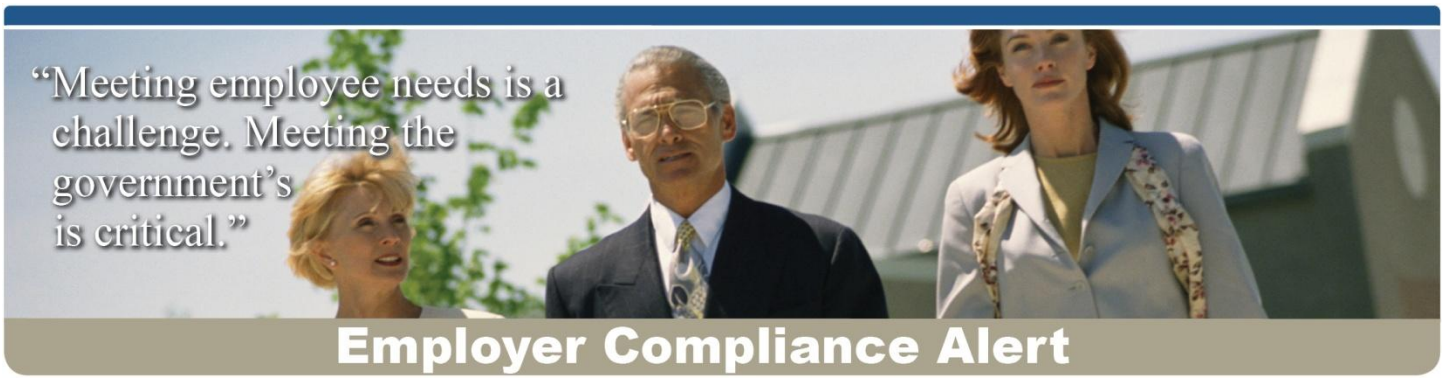

IRS GUIDANCE EXPLAINS FORM W-2 REPORTING OF HEALTH COVERAGE; FURTHER DELAYS REPORTING FOR SMALL EMPLOYERS

The Affordable Care Act requires that employees' W-2s provide useful and comparable consumer information on the cost of their employer-sponsored health coverage. On March 29, 2011, the IRS issued Notice 2011-28, providing interim guidance on this new reporting requirement.

As we discussed in our October 2010 article, this W-2 reporting is *optional* for 2011, but *required* for the 2012 Forms W-2 (to be given to employees in January of 2013). As we also noted, such reporting will not affect the tax treatment of employer-sponsored coverage. This most recent guidance provides details about the employers, plans, and coverage that are subject to the new reporting requirement; extends transition relief in certain cases; and gives examples of how to determine the value of coverage.

All employers that provide "applicable employer-sponsored coverage" during a calendar year will be subject to this W-2 reporting requirement (see our October 2010 article for a definition of "applicable employer-sponsored coverage"). This specifically includes governmental entities, churches, and other religious organizations, to the extent such employers provide applicable employer-sponsored coverage under a group health plan. However, employers will not have to report the value of coverage for anyone who is not otherwise entitled to a Form W-2, such as retirees, disabled former employees, or surviving spouses.

Small employers (i.e., those filing fewer than 250 Forms W-2 for 2011, in January of 2012) do not have to comply with the new reporting requirement through at least 2012, or until the IRS issues further guidance. In other words, small employers will not have to report the cost of health care coverage on any forms required to be furnished to their employees before January of 2014, at the earliest.

The value of certain types of coverage need not be reported on employees' Forms W-2. These include the following:

- Coverage under a multiemployer plan;
- Coverage under any *self-insured* plan that is exempt from the requirement to offer COBRA coverage (such as a church plan);
- Dental or vision coverage that is not integrated into a group health plan;

- Coverage under a health reimbursement arrangement;
- The amount contributed to any Archer medical savings account;
- The amount contributed to any health savings account; and
- The amount of any salary reduction election under a flexible spending arrangement. (Note that any *true* employer contributions to an FSA - such as "flexcredits" - *must* be reported.)

Employers may determine the "aggregate cost" of an employee's coverage using the COBRA applicable premium method (i.e., by simply reporting the applicable COBRA premium for the same period), or by using one of several other methods described in the Notice. The aggregate cost is the total cost of coverage under all applicable employer-sponsored coverage provided to the employee. It generally includes both the portion of the cost paid by the employer and the portion paid by the employee, regardless of whether the employee paid that cost through pre-tax or after-tax contributions.

Because this reporting requirement generally takes effect with the calendar-year 2012 Forms W-2 (issued to employees in January of 2013), employers should have sufficient time to make the payroll, recordkeeping, employee communication, and other changes necessary to comply with the requirement. The IRS indicates that any future guidance will be prospective only and will apply no earlier than the calendar year beginning at least six months after the new guidance is issued. Nonetheless, the issuance of this comprehensive guidance serves as a good time for employers to start the process of complying with this new requirement.

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