

Alerts and Updates

IRS PUBLISHES GUIDANCE ON HEALTHCARE REFORM CHANGES TO FORM W-2

April 1, 2011

On March 29, 2011, the Internal Revenue Service (IRS) published [Notice 2011-28](#) (the "Notice"), which provides interim guidance on the impending requirement to report to employees on Form W-2 the cost of their employer-provided group health plan coverage.

The Internal Revenue Code provides that an employer is required to provide a written statement to each employee, showing the remuneration paid to the employee during the calendar year. Employers use Form W-2 to provide an employee this information.

Pursuant to the Patient Protection and Affordable Care Act—one of the two pieces of legislation that constituted President Obama's healthcare reform—the Form W-2 must now include the aggregate cost of applicable employer-sponsored group health plan coverage. The IRS's reasoning behind this requirement is to provide useful and comparable consumer information to employees on the cost of their healthcare coverage.

This new reporting requirement—originally set to be effective for taxable years beginning on or after January 1, 2011 (*i.e.*, for Forms W-2 issued on or before January 31, 2012)—created widespread concern among employers about how it would be implemented. In response, the IRS stated in late 2010 that employers are not required to report the cost of health coverage until the 2012 Forms W-2 (*i.e.*, a one-year delay). However, employers have the ability to report earlier for Forms W-2 issued in January 2012 if they so desire.

The Notice provides employers with the most detailed guidance yet on the subject, and its key provisions are summarized below.

In General

First of all, the Notice clarifies that the new reporting requirement is informational only and will not have any impact on whether such coverage is taxable. This is a common misconception of the new reporting requirement.

Employers Subject to the Reporting Requirement

While the general rule is that all employers that provide applicable employer-sponsored coverage during a calendar year are subject to the reporting requirement, a limited exception exists for small employers. In the case of the 2012 Forms W-2 (which are required to be issued on or before January 31, 2013) and until the issuance of further guidance, an employer is not subject to the new reporting requirement for any calendar year if the employer was required to file fewer than 250 Forms W-2 for the preceding calendar year. Therefore, small employers are granted an additional year to prepare.

Method of Reporting on the Form W-2

The Notice specifies that the aggregate reportable cost will be reported on Forms W-2 in box 12, using code DD. With respect to coverage provided for a period during a calendar year after an employee has terminated employment, an employer may apply any reasonable method of reporting the cost of coverage provided under a group health plan, as long as the method is used consistently for all employees receiving coverage under that plan who terminate employment during the plan year. However, an employer is not required to issue a Form W-2 including the aggregate reportable cost to an individual to whom the employer is not otherwise required to issue a Form W-2, such as a retiree or other former employee receiving no compensation. The treatment of retiree healthcare coverage was vague prior to the Notice.

Aggregate Cost of Applicable Employer-sponsored Coverage

Under the Notice, the aggregate cost of applicable employer-sponsored coverage is defined as the total cost of coverage under all applicable employer-sponsored coverage provided to the employee. Applicable employer-sponsored coverage means coverage under any group health plan made available to the employee by an employer that is excludable from the employee's gross income or would be excludable if it were employer-provided coverage.

The Notice also provides that the aggregate reportable cost includes both the portion of the cost paid by the employer and the portion of the cost paid by the employee, regardless of whether the employee paid for that cost through pre-tax or after-tax contributions (subject to the flexible-spending-arrangement exception noted below).

Cost of Coverage Required to Be Included in the Aggregate Reportable Cost

In general, the cost of coverage under all applicable employer-sponsored coverage has to be included in the aggregate reportable cost. However, the following amounts are not included in the aggregate reportable cost and may not be reported on the Form W-2: (1) the amount contributed to an Archer MSA; (2) the amount contributed to any health savings account; and (3) the amount of any salary reduction election to a flexible-spending arrangement. In addition, an employer that contributes to a multiemployer plan is not required to include the cost of coverage provided to an employee under that multiemployer plan in determining the aggregate reportable cost.

Method of Calculating the Cost of Coverage

An employer may calculate the reportable cost under any of the following methods:

- **The COBRA applicable-premium method.** Under this method, the reportable cost for a period equals the COBRA applicable premium for that coverage for that period.
- **The premium charged method.** This method may be used to determine the reportable cost only for an employee covered by an employer's insured group health plan. In such a case, the employer is required to use the premium charged by the insurer for that employee's coverage for each period as the reportable cost for that period.
- **The modified COBRA premium method.** An employer may use this method only where it subsidizes the

cost of COBRA or whether the actual premium charged by the employer to COBRA-qualified beneficiaries for each period in the current year is equal to the COBRA applicable premium for each period in a prior year.

It is important to note that while employers are not required to use the same method for every plan they sponsor, they must use the same method with respect to a plan for every employee receiving coverage under that plan.

What This Means for Employers

While the guidance contained in the Notice is optional for 2011 Forms W-2, employers should be aware of the reporting changes that are mandatory, beginning with the 2012 Forms W-2. In addition, employers that issue fewer than 250 Forms W-2 in 2011 will continue to be exempt from the reporting requirements for the 2012 Forms W-2. Another key development is that employers are not required to issue a Form W-2 to an individual to whom the employer is not otherwise required to issue a Form W-2—prior to this guidance, it was unknown how retiree healthcare plans would be impacted by the reporting requirement.

For Further Information

If you have any questions about this *Alert*, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Disclaimer: This Alert has been prepared and published for informational purposes only and is not offered, or should be construed, as legal advice. For more information, please see the firm's [full disclaimer](#).