



Employer Services Advisory

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IRS Provides Guidance on Form W-2 Reporting of Health Plan Costs

This is part of our series of alerts intended to help guide employers and plan sponsors through their new obligations under the recently-enacted health care reform laws and related guidance.

Health care reform laws require that employers report the aggregate cost of employer-provided health care coverage on an employee's Form W-2. The IRS issued Notice 2010-69 last fall which made this requirement optional for the Form W-2 for the 2011 calendar year (which is provided to employees in January 2012). On March 29, 2011, the IRS issued Notice 2011-28 (the "Notice"), which exempts small employers from the Form W-2 reporting requirement until further notice and provides guidance to non-exempted employers on how they should comply with the rules.

When must employers report health plan costs on Forms W-2?

If you are an employer (other than an Indian tribal government), the health care reform laws require that you report the aggregate cost of employer-provided health care coverage on your employee's Form W-2 for tax years beginning on or after January 1, 2012 (i.e., for Form W-2s you provide to employees in January 2013).

The Notice now exempts certain small employers from this Form W-2 requirement. For small employers filing fewer than 250 Form W-2s, the reporting requirement will be optional for 2012 and later years until further guidance is issued. This means that small employers are exempted indefinitely from the reporting obligation until the IRS issues additional guidance.

When reporting the cost of health care coverage on Form W-2, code "DD" should be used in box 12. The IRS notes that the Form W-2 reporting obligation is for informational purposes only (to inform employees about the cost of their health care coverage); it will not cause otherwise excludable employer-provided health coverage to become taxable.

What must you report on employees' Forms W-2?

The Notice will help you determine how to report costs on the Form W-2, what coverage should be included, and how to calculate the cost of coverage. For a copy of the Notice, go to <http://www.irs.gov/pub/irs-drop/n-11-28.pdf>.

The following is a summary of some key issues discussed in the Notice:

Employer-Sponsored Coverage – The aggregate cost of “applicable employer-sponsored coverage” must be reported on the Form W-2. “Applicable employer-sponsored coverage” generally means group health plan coverage that an employer makes available to the employee that is excludible from the employee’s income under Section 106 of the Internal Revenue Code, but does not include the following benefits:

- long-term care;
- accident or disability income, liability, workers’ compensation, automobile medical payment, and credit-only insurance, and other similar coverage;
- stand-alone vision and dental plans; and
- specified disease or illness and hospital indemnity or other fixed indemnity insurance.

Aggregate Cost — The “aggregate cost” of health care coverage that must be reported on the Form W-2 is defined in the Notice as “the total cost of coverage under all applicable employer sponsored coverage.” Aggregate cost includes both the portion of the cost paid by the employer and the employee, whether pre-tax or post-tax, for coverage for the employee and his or her dependents or other persons covered through the employee, but excludes the following: amounts contributed to an Archer MSA, HSA or HRA, most employee contributions to a flexible spending arrangement (FSA), and amounts contributed under certain plans maintained primarily for members of the military. However, if the amount of the health FSA (i.e., an employee’s contributions plus employer flex credits (such as matching contributions)) for the plan year exceed the employee’s contributions, then the amount of the health FSA, less the employee’s contributions, is included in the aggregate cost reported on the Form W-2. Three alternative methods are provided for calculating the reportable cost: (i) the COBRA applicable premium, (ii) the premium charged by the plan’s insurers, or (iii) for an employer that subsidizes the cost of COBRA coverage, a good faith estimate of the COBRA applicable premium. You are not required to use the same method for all of your plans, but you must apply the same method for everyone in a particular plan.

Mid-Year Terminations — If an employee terminates employment mid-year, you may apply any reasonable method (e.g. coverage prior to termination vs. pre-termination coverage and COBRA) of reporting the cost of the former employee’s health care coverage as long as that method is used consistently for all employees receiving coverage under the plan who terminate during the plan year.

Multiple Employers — If an employee is employed by two employers within the same calendar year, you must provide a Form W-2 reporting the aggregate cost of coverage that you provided during the year. However, if you and the other employer are related and either you or the other employer is a common paymaster, the common paymaster will include the aggregate cost of coverage provided to that employee by all employers that it serves as the common paymaster. In this situation, the related employer that is not the common paymaster will not report.

Successor Employers — If an employee transfers to a successor employer, the predecessor and successor employers must each report the aggregate cost of health care coverage that it provided during the

year, unless the successor employer follows the alternative procedure. The alternative procedure is typically used in M&A transactions where the buyer and seller agree that the buyer will furnish W-2s to all employees transferred to the buyer reflecting wages paid by both the buyer and seller, and the seller will be relieved of all W-2 reporting obligations for those employees. The Notice provides that if the successor employer uses the alternative procedure, the successor employer will include the predecessor employer's cost that it reports, and the predecessor employer will have no reporting obligation.

Multiemployer Plans — If you contribute to a multiemployer plan (such as a union plan), you are not required to report the aggregate cost of health care coverage provided to an employee through the multiemployer plan in determining the aggregate cost of coverage.

With a team of attorneys who are highly experienced in the employee benefits field, MLA can provide answers to questions and assistance in complying with these requirements.

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