

Health Care Reform's W-2 Reporting Guidance

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Beginning in 2013, large employers will have to report the cost of group health coverage provided to their employees on Internal Revenue Service (IRS) Form W-2. The IRS has recently issued new guidance in Notice 2011-28 regarding this obligation, described in more detail below.

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:

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

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.

When are employers required to comply with these requirements?

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

What plans should be included in the reporting requirement?

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 some non-traditional plans, such as on-site medical clinics and mini-med plans.

Employers do not need to report costs for the following plans:

- 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 and hospital indemnity plans
- Amounts contributed to health savings accounts or Archer-MSAs
- Employee contributions to health flexible spending accounts

What amount should be reported?

The reported amount 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. For a fully-insured plan, the amount reported is the premium charged for coverage. For a self-insured plan, 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.

Employers should report the costs in box 12 of Form W-2, using the code "DD" which indicates that the amount is non-taxable. Employers are not required to report the costs on Form W-3 (the employer's transmittal of Wage and Tax Statements to the Social Security Administration). Furthermore, these regulations do not impose a 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).

What actions should employers take now?

The 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 setting up the infrastructure to calculate the reportable cost.

What are the penalties for noncompliance?

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

If you have questions about the new Form W-2 reporting regulations, or about Health Care Reform in general, please contact April A. Goff (agoff@wnj.com or at 616.752.2154) or any other member of Warner Norcross & Judd LLP's Health Care Reform Taskforce.