



## Legal Alert: Do Employers Need to Report the Amounts that They Pay for Employees' Health Insurance?

10/18/2010

The Patient Protection and Affordable Care Act of 2010 (the "Act") added Section 6051(a)(14) to the Internal Revenue Code of 1954 (the "Code") requiring that the aggregate cost incurred by an employer for employer-sponsored health coverage provided to an employee be reported on the employee's Form W-2, for informational purposes, effective for taxable years beginning after December 31, 2010 (*i.e.*, 2011 Forms W-2 to be filed in early 2012).

For this purpose, the Act also provides that the reportable cost should be determined in a manner similar to the determination of an "applicable premium," under Section 4980B(f)(4) of the Code, for purposes of COBRA continuation coverage.

The IRS has now issued Notice 2010-69 (the "Notice") providing that this new reporting requirement will not be mandatory for Forms W-2 that will be issued for 2011. As a result, an employer will not fail to meet the requirements of Code Section 6051, and will not be subject to any penalties, merely because it does not report the cost of employer-sponsored health coverage on employees' Forms W-2 issued for 2011 compensation. (Of course, in situations where the cost is taxable to the employee, the amount would be includible in taxable wages reported on the Form W-2, and the Notice has no application.)

The IRS also released a preliminary draft of the 2011 Form W-2. Consistent with the Notice, the instructions make it clear that the employer may – but need not – provide information regarding the aggregate cost of health coverage. If it is provided, the Form prescribes a new Code DD to identify the entry. Omitting the information, however, is acceptable, pursuant to the Notice.

Forms W-2 that will be filed for 2010 compensation are not affected by the Act's amendment to Code Section 6051, and are not required to include any information regarding nontaxable cost of employer-provided health coverage. The Notice did not have to address those Forms.

The IRS indicates that it anticipates issuing additional guidance on this reporting requirement sometime before the end of this year, in order to provide sufficient lead time for modifying payroll systems to enable reporting of "aggregate cost."

If you have any questions about the Notice or about the Act's reporting requirements, please contact the author of this Legal Alert, Jeffrey Ashendorf, at [jashendorf@fordharrison.com](mailto:jashendorf@fordharrison.com), any member of Ford & Harrison's Employee Benefits Group or the Ford & Harrison attorney with whom you usually work.

You may also visit the health care reform section of the Ford & Harrison website, <http://www.fordharrison.com/HealthcareReform.aspx>, for more helpful resources and tools on health care reform.