ACA: FORM W-2 REPORTING REQUIREMENT

GUIDANCE ON ACA FORM W-2 REPORTING REQUIREMENT

The ACA requires employers that sponsor fully insured or self-insured group health plans to report information to the IRS annually via Form W-2 regarding the cost of health coverage provided to employees during the prior calendar year. This publication discusses the ACA's Form W-2 reporting requirements, including the effective date of the requirement, the employers and plans subject to the requirement, the types of coverage that are reportable, the methods of calculating the cost of those coverage types and the penalties relating to noncompliance. In addition, the Resources section of the publication includes links to forms, instructions and other resources that may be helpful to employers.

THE FORM W-2 REPORTING REQUIREMENT

The Form W-2 reporting requirement remains on hold for employers filing fewer than 250 Forms W-2.

Effective for Form W-2 reporting in 2013 (for calendar year 2012) and annually thereafter, employers are required to report the aggregate cost of applicable employer-sponsored group health plan coverage on each covered employee's Form W-2. The employer must report the cost of coverage on a calendar-year basis, regardless of the employer's ERISA plan year or medical policy or contract year. The reporting is intended for informational purposes for the employee (to provide employees with the cost of their healthcare coverage) and does not cause the cost of such coverage to be included in the employee's income or otherwise become subject to federal taxation. For further information about other ACA reporting requirements, see the PPI publication **ACA: Employer Mandate Reporting Requirements**.

Further, coverage amounts do not need to be reported if a former employee receives health benefits but would not receive a Form W-2 except for the reporting requirement. In other words, if a former employee or retiree that is receiving health benefits (such as COBRA or retiree benefits) does not receive any compensation from the employer that would require a Form W-2, then the employer does not need to issue a Form W-2 to the former employee or retiree.

EMPLOYERS SUBJECT TO THE REQUIREMENT

Generally speaking, all employers, including private companies, governmental entities, church organizations and tax-exempt organizations, are subject to the Form W-2 reporting requirement.

A small employer exception for employers who filed fewer than 250 Forms W-2 in the previous calendar year remains in place. Unless changed by future guidance, employers who file fewer than 250 Forms W-2 in the calendar year are exempted from the reporting requirement for the next calendar year.

For purposes of determining the small employer reporting exception, the limit of 250 includes Forms W-2 filed by an employer's agent under IRC Section 3504. For example, if an employer would have filed 300 Forms W-2 in in any given reporting year had it not used an agent, that employer would be subject to the reporting requirement for the following reporting year.

Importantly, the employer aggregation rules do not apply for purposes of determining the small employer reporting exception. For example, a subsidiary that filed 200 Forms W-2 in the prior year is exempt from the reporting in the current year, even if the controlled group filed 250 or more Forms W-2 in the prior year. Lastly, there is an exemption for federally recognized Indian tribal governments (including tribally chartered corporations wholly owned by federally recognized Indian tribal governments).

Employers that file fewer than 250 Forms W-2 for one calendar year, self-insured plans that are not subject to COBRA (including church plans) and multi-employer plans continue to be exempted from the Form W-2 reporting requirement until further notice.

REPORTABLE PLAN INFORMATION

Employers must report on Form W-2 the cost of "applicable employer-sponsored coverage," which is generally defined as any group health plan coverage provided by the employer to an employee that is excludable from the employee's income (usually under IRC Section 106). Employers must report the appropriate amount in Box 12 of Form W-2 using code DD. The chart below outlines the various contributions and coverages that are included in the definition of applicable employer-sponsored coverage.

Applicable Employer-Sponsored Coverage

Included	Not Included
Major medical coverage	Employee health FSA contributions (through salary reductions)
Executive medical plan coverage	HRA coverage[1]
Combined medical/dental/vision plan (note that reporting is optional for standalone dental and vision coverage)	HSA (both employer and employee contributions) and Archer MSA contributions (note that contributions to an HSA are separately required to be reported on a Form W-2)
Employee assistance program (EAP) (only included if a COBRA premium is charged for continued coverage under the EAP)[1, 2]	Noncoordinated coverage for specified disease or illness (e.g., cancer coverage)
Employer health FSA contributions (including employer flex credits)	Coverage under a HIPAA-excepted benefit, including a standalone vision or dental plan[3]
On-site medical clinics (only included if a COBRA premium is charged for continued coverage)[1, 2]	Coverage for long-term care
Prescription drug coverage	Multiemployer plans[1]
	Self-insured group health plans not subject to COBRA (e.g., plans sponsored by church organizations)[1]
	Coverage provided under a government plan that provides coverage primarily for members of the military and their families

1. Subject to transition rules (discussed below).
2. The cost of coverage provided under an EAP, wellness program or on-site medical clinic is only includible in the aggregate reportable cost if a COBRA premium is charged. An employer not subject to COBRA is not required to include the cost of coverage under an EAP, wellness program or on-site medical clinic.
3. Generally, in order for a dental or vision benefit to be a HIPAA-excepted benefit, employees must have the right not to elect the dental or vision benefit; employees who elect the dental or vision benefit must be required to pay a cost-share contribution toward the respective coverage.

Importantly, an employer is required to report the aggregate cost of applicable employer-sponsored coverage, including amounts paid by the employer and the employee, regardless of whether the employee's contributions are made on a pre- or post-tax basis. This would also include all contributions for covered individuals, including the employee's spouse and dependents and all amounts reported as income as a result of coverage (including the cost of coverage for an adult dependent over age 26 or for a domestic partner).

Note that, unlike other HRAs, benefits provided under Qualified Small Employer HRAs (QSEHRAs) are reported on Form W-2, but they do not count towards the aggregated reportable cost and the employer uses a different reporting code.

PERMISSIBLE REPORTABLE COST CALCULATION METHODS

Employers may use any one of three methods to determine the reportable cost.

- **COBRA Applicable Coverage Method:** The employer reports the cost of coverage equal to the COBRA applicable premium. A good-faith estimate of the COBRA premium may be used.
- **Premium Charged Method:** The employer reports the cost of coverage by using the premium charged by the insurer for the employee's coverage (and any dependents). Only employers with fully insured plans may use this method.

- **Modified COBRA Premium Method:** If the employer subsidizes the COBRA cost, then the employer may report a reasonable good-faith estimate of the full cost of coverage. This approach recognizes situations where an employer with a self-insured plan subsidizes the cost of COBRA by deliberately underestimating the actual cost of health benefits.

Regardless of the method used to calculate the aggregate reportable cost, all plans must be reported on a calendar-year basis (even if the employer sponsors a non-calendar-year plan). In addition, if an employee begins, changes or terminates coverage during the year, the reported costs must reflect the actual periods of coverage.

For a program in which an employee receives benefits that constitute applicable employer-sponsored coverage, as well as benefits that do not constitute applicable employer-sponsored coverage (such as long-term disability), an employer may use any reasonable method to determine the cost of the portion of the program that provides applicable employer-sponsored coverage. Employers should track actual coverage for each employee over the course of the entire calendar year and report accordingly, using one of the above methods and in accordance with the above rules.

SPECIAL CONSIDERATIONS FOR CALCULATING THE COST OF COVERAGE

There are special rules for certain situations, including changes in coverage and cost of coverage, employers charging blended or composite rates, and non-calendar-year plans.

Changes in Coverage and Cost of Coverage
If an employee enrolls in, terminates or changes coverage during the calendar year (including coverage tier changes), the amount reported on Form W-2 must reflect that change. For changes during a discrete coverage period (such as mid-month changes), employers may use any reasonable method to determine the reportable cost for that period, so long as the employer uses the same method for all employees it covers under the plan. Reasonable methods would include prorating or averaging the reportable costs for the month, or using the reportable cost at the beginning or end of the month. Employers must also take into account a change in coverage or cost of coverage during the course of a plan year (for non-calendar-year plans) and report coverage costs accordingly.

Further, the aggregate reportable cost for a calendar year may be based on information available to the employer as of December 31 of that year, without regard to any election or notification made after such date that retroactively affects coverage. Therefore, any election or notification that is made or provided in the subsequent calendar year that has a retroactive effect on coverage in the earlier year is not required to be included in the calculation of the aggregate reportable cost for the calendar year. Additionally, an employer that receives an employee's retroactive election or notification is not required to furnish a Form W-2c to that employee if a Form W-2 has already been provided for the calendar year.

For midyear terminations, the employer has flexibility to report only the cost of coverage received prior to termination or to report the cost of COBRA coverage. In addition, if an employee terminates employment and requests a Form W-2 prior to the end of the calendar year, the employer is not required to report any amount for coverage on Form W-2.

Charging Blended or Composite Rates
If an employer charges the same rate for all employees under the plan (i.e., a blended rate), regardless of the scope of coverage, the employer may report the same amount for all employees for that period. If the plan charges different rates for different tiers of coverage (i.e., a composite rate, such as separate rates for employee-only, employee plus one, employee plus family, etc.) and employees in each tier pay the same premium, the employer may report the same amount for each per-tier coverage group for that period.

For employers that charge a composite rate for active employees but do not use a composite rate for determining applicable COBRA premiums for qualified beneficiaries, the employer may use the composite rate or the applicable COBRA premium to determine the aggregate cost of coverage reported on the Form W-2, provided the same method is used consistently for all active employees and for all qualified beneficiaries.

Non-Calendar-Year Plans
The reportable cost of coverage must be determined on a calendar-year basis. Thus, the employer cannot use a non-calendar 12-month determination period for purposes of calculating the applicable COBRA premium under the plan when calculating the cost of coverage. Instead, the employer must apply rules similar to the rules for calculating the cost of coverage when an employee has a mid-year change in coverage.

There are special rules for reporting the cost of coverage when a coverage period spans two taxable years. Where a coverage period extends beyond December 31 of a reporting year, the employer has the option to:

- Treat the coverage as provided under the calendar year that includes December 31.

- Treat the coverage as provided during the calendar year immediately subsequent to the calendar year that includes December 31.
- Allocate the cost of coverage for the coverage period between each of the two calendar years under any reasonable allocation method, which generally should relate to the number of days in the period of coverage that fall within each of the two calendar years.

Whichever method the employer decides to use must be applied consistently to all employees.

MULTIPLE EMPLOYERS

If an employee has multiple employers during a calendar year, each employer must report the employee's cost of coverage. If, however, the employee has a common paymaster (i.e., related employers) among the multiple employers, then only the common paymaster must report the cost of the coverage. If the employee transfers from a predecessor to a successor employer, the successor employer can report the cost of coverage for both employers. Lastly, if related employers employ the same employee, but do not use a common paymaster, the employers may either report the total aggregate on a single Form W-2 or allocate the cost between the employers and report the divided cost on separate Forms W-2.

In addition, an employer that contributes to a multiemployer plan is not required to include the cost of health benefits under a multiemployer plan.

PENALTIES FOR NONCOMPLIANCE

The penalty for failing to properly comply with the Form W-2 reporting requirement is $250 per Form W-2, up to a maximum of $3 million.

Forms W-2 issued incorrectly must be corrected, in which case employers should consult with their tax advisor.

ADDITIONAL GUIDANCE

105(h) and S Corporations: The aggregate reportable cost does not include excess reimbursements of highly compensated individuals that are included in income because a self-insured plan violated the nondiscrimination rules in IRC Section 105(h). In addition, a similar rule applies to coverage provided to 2% shareholder-employees of S corporations.

Reporting Benefits Otherwise Exempted Under Interim Relief: An employer may include in the aggregate reportable cost the cost of coverage that is not required to be included in the aggregate reportable cost under applicable interim relief, including coverage under an HRA, multiemployer plan, EAP, wellness program or on-site medical clinic, provided such coverage is calculated using a permissible method (as outlined in IRS Notice 2012-9) and is applicable employer-sponsored coverage.

Hospital Indemnity/Other Fixed Indemnity Insurance: Generally speaking, the cost of hospital indemnity, other fixed-indemnity insurance, or coverage only for a specified disease or illness is not required to be included in the aggregate reportable cost if the benefit is offered as an independent, noncoordinated benefit and is paid for with after-tax dollars or is includible in gross income. However, this exception does not apply if the employer makes any contribution to the cost of coverage that is excludable from income, or if the employee purchases the policy on a pre-tax basis under a cafeteria plan. In that case, the employer's contributions must be reported.

Third-Party Sick Pay Providers: A third-party provider that makes payments of sick pay to employees on the employer's behalf has no responsibility for reporting such payments on a Form W-2. However, a Form W-2 furnished by an employer must include the aggregate reportable cost of coverage even if that Form W-2 includes sick pay or if a third-party provider furnishes a separate Form W-2 that reports the sick pay. Third parties and employers should use Form 8922 to report payments of sick pay paid on or after January 1, 2014. This form must be filed instead of Form W-2.

SUMMARY

In summary, in order to avoid penalties, employers should continue to report the appropriate cost of coverage on employees' Forms W-2. Employers should work with payroll administrators and internal HR and benefit departments to determine which benefits, and the related appropriate cost, to report.

RESOURCES

Notice 2012-9

Form W-2

Form W-2c and Instructions (for corrected returns)

Form W-2 Instructions

IRS, Employer-Provided Health Coverage Informational Reporting Requirements: Questions and Answers

PPI BENEFIT SOLUTIONS