

# HEALTH CARE REFORM FORM W-2 REPORTING REQUIREMENT

## GUIDANCE ON HEALTH CARE REFORM'S FORM W-2 REPORTING REQUIREMENT

This paper focuses on health care reform's Form W-2 reporting requirement, 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 penalties relating to noncompliance. In addition, the paper includes frequently asked questions (FAQs) and additional resources that may be helpful to employers.

## THE FORM W-2 REPORTING REQUIREMENT

Under health care reform, employers are required to report the aggregate cost of applicable employer- sponsored group health plan coverage on each employee's Form W-2. The employer must report the cost of coverage on a calendar-year basis, regardless of the plan year used for the health plan. The reporting is intended for informational purposes for the employee (to provide employees with the cost of their health care 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.

## EMPLOYERS SUBJECT TO THE REQUIREMENT

Generally speaking, all employers, including private companies, governmental entities, church organizations and tax-exempt organizations, are subject to the 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 previous calendar year are exempted for the next calendar year. For this purpose, the limit of 250 includes Forms W-2 filed by an employer's agent under Internal Revenue Code (IRC) Section 3504. For example, if an employer would have filed 300 Forms W-2 in 2014 had it not used an agent, that employer would be subject to the reporting requirement for 2015.)

Importantly, the employer aggregation rules do not apply for this purpose. For example, a subsidiary that filed 200 Forms W-2 in 2015 is exempt from the reporting in 2016, even if the controlled group filed more than 250 Forms W-2 in 2015. Lastly, there is an exemption for federally recognized Indian tribal governments (including tribally chartered corporations wholly owned by federally recognized Indian tribal governments).

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



## EFFECTIVE DATE

Generally speaking, the reporting requirement is an annual requirement that has been in effect since 2012. There were some transition rules for earlier years, though. For 2011, the Form W-2 reporting was voluntary, since Notice 2011-28 formally delayed implementation of the reporting requirement. According to that guidance, employers were not required to include the cost of coverage on any Form W-2 required to be issued before January 2013. Thus, the reporting requirement first applied with respect to coverage provided in 2012. This means that most employers began reporting the costs of employees' health coverage for 2012 and reported that value on the Form W-2, which generally was provided to employees in January 2013.

However, employers that file fewer than 250 Forms W-2 for one calendar year, self-insured plans that are not subject to the Consolidated Omnibus Budget Reconciliation Act (COBRA) (including church plans) and multiemployer plans continue to be exempted from the requirement until further guidance is issued.

## 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). The chart below outlines the various contributions and coverages that are included in that definition.

APPLICABLE EMPLOYER-SPONSORED COVERAGE	
Included	Not Included
Major medical coverage	Employee Health FSA contributions (through salary reductions)
Executive medical plan coverage	HRA coverage <sup>1</sup>
Combined medical/dental/vision plan	HSA and Archer MSA contributions
Employee assistance program (EAP) (only included if a COBRA premium is charged for continued coverage under the EAP) <sup>1,2</sup>	Noncoordinated coverage for specific illness or disease (i.e., cancer coverage)
Employer contributions to health FSA (including employer flex credits)	The amount of a health FSA is not required to be included if the amount of the health FSA is funded only through employee salary contributions.  Coverage under a HIPAA- excepted benefit, including a stand-alone vision or dental plan, is not included. <sup>3</sup>
On-site medical clinics (only included if a COBRA premium is charged for continued coverage) <sup>1,2</sup>	Coverage for long-term care
Prescription drug coverage	Multiemployer plans <sup>1</sup>
	Self-insured group health plans not subject to COBRA (e.g., plans sponsored by church organizations) <sup>1</sup>
	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 to be a HIPAA-excepted benefit, participants must have the right not to elect the dental or vision benefits and if they do elect the dental or vision benefits, they must pay an additional premium or contribution for that 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).

## 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 for the period. 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. This approach recognizes situations where an employer with a self-insured plan subsidizes the cost of COBRA by 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 providing 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 year (including coverage tier changes), the amount reported on Form W-2 must reflect that change. For changes during a period (such as in the middle of a month), 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. The employer must also take into account a change in coverage or cost in coverage during the course of a plan year and report coverage accordingly.

Further, the aggregate reportable cost for a calendar year may be based on information available to the employer as of Dec. 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. In practice, this means that if an employee were to make a change of status election in January 2015, affecting the cost of coverage in 2014, the changes in the cost of coverage would not need to be reflected in the aggregate reportable cost for 2014. Additionally, an employer is not required to furnish a Form W-2c if a Form W-2 has already been provided for a calendar year before the election or notification.

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 has different tiers of coverage (i.e., 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 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 qualifying 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 qualifying beneficiaries.

### Non-calendar-year Plans

The reportable cost 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 change in coverage during the year.

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

- Treat the coverage as provided under the calendar year that includes Dec. 31;
- Treat the coverage as provided during the calendar year immediately subsequent to the calendar year that includes Dec. 31; or
- 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 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.

## WHERE TO REPORT THE COST OF COVERAGE

Employers must report the appropriate amount in Box 12 of the Form W-2 using code DD.

## PENALTIES FOR NONCOMPLIANCE

The penalty for failing to properly comply with the Form W-2 reporting requirement is \$200 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 percent 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, non-coordinated 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 even if that Form W-2 includes sick pay or if a third-party provider is furnishing a separate Form W-2 reporting the sick pay. Third parties and employers should use Form 8922 to report payments of sick pay paid on or after Jan. 1, 2014. This form must now 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. For specific questions or concerns, please reach out to your NFP advisor.

## FAQS

### **Q. Does the reporting requirement cause the cost of coverage to become taxable to the employee?**

**A.** No. The reporting is for informational purposes only and will not affect the taxability of any such coverage.

### **Q. How do employers report the cost of coverage for terminated employees?**

**A.** If an employee terminates employment prior to the end of the year, the employer may use any reasonable method of reporting the cost of coverage, provided that method is used for all employees in the plan. If a terminated employee requests a Form W-2 prior to the end of the calendar year in which they were terminated, the employer does not have to report the cost of coverage on that employee's Form W-2 and does not need to issue a separate Form W-2 solely for purposes of satisfying the Form W-2 reporting requirement.

### **Q. How do employers report the cost of coverage for retirees and other former employees?**

**A.** 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 retiree or former employee 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 retiree or former employee.

### **Q. How do employers report the cost of coverage for union employees?**

**A.** An employer that contributes to a multiemployer plan is not required to include the cost of health benefits under a multiemployer plan.

## **ADDITIONAL 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**

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