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Employee Benefits Guidance for Employers

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Affordable Care Act – End of Year – Some Delays

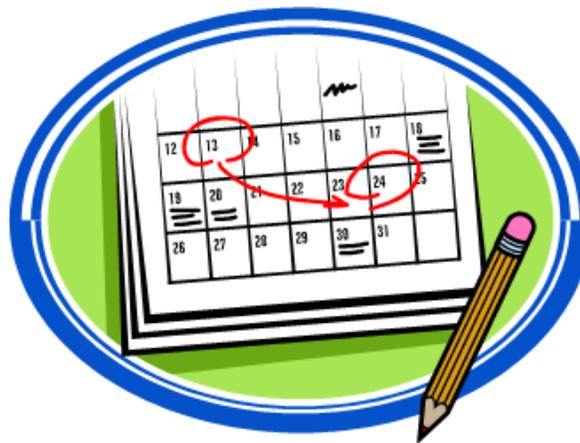
Executive Summary

There are a few new end-of-year laws that will impact the Affordable Care Act (ACA) as it applies to large and small employers, as well as insurers, and associations offering group health plans. The laws are generally favorable for employers who are looking for a little more time and explanation with respect to several key ACA requirements. Here is a snapshot of the relevant end-of-year guidance:

- On December 28, 2015, the IRS issued [**Notice 2016-4**](#) to extend due dates for the Forms 1094 and 1095 that are due in early 2016.
- On December 18, 2015, the [**Consolidated Appropriations Act of 2016**](#) included a tax extension package called the **Protecting Americans from Tax Hikes (PATH) Act of 2015**. The PATH Act includes a two-year delay for the ACA “Cadillac” excise tax and revises the law in a way that it will be fully tax deductible for impacted employers.
- On December 16, 2015, the IRS issued [**Notice 2015-87**](#), which provides 26 questions and answers about employer-sponsored health plans, including HRA integration, Health FSA carryovers, HSA treatment, and employer reporting requirements.

Notice 2016-4 - ACA Employer Reporting Requirements Delayed

Large and small employers who are required to report group health plan coverage on Forms 1094 and 1095 will have a short reprieve in early 2016, according to **IRS Notice 2016-4**. For most employers, Forms 1094 and 1095 will be a brand new reporting requirement associated with ACA compliance. Here are the new deadlines for each form:



- Individual statements to employees and other plan participants reported on Form 1095-B or 1095-C were originally due by February 1, 2016 but the deadline has been extended to March 31, 2016.
- Transmittal forms reported on Form 1094-B or 1094-C and the accompanying Forms 1095, filed to the IRS:
 - If filing electronically: Forms were originally due by March 31, 2016 but the deadline has been extended to June 30, 2016.
 - If filing in hardcopy: Forms were originally due by February 29, 2016 but the deadline has been extended to May 31, 2016.

Despite the delayed deadlines, we continue to encourage all employers to promptly gather information and begin completion of all ACA reporting forms in early January 2016.

TIP: Although many employers are finding software and vendor assistance with completing the Forms, it is important to have a qualified advisor who is familiar with the complex ACA regulations engaged to evaluate the employer's method of compliance and review the Forms for consistency. We are finding that, once employers sit down to work on the Forms, most of them need to step back and also look at their employment policies, re-evaluate their eligibility requirements and study their plan documents/SPDs. It is critical that the reporting accurately reflect the employer's method of ACA compliance, and that the employer is actually operating in the manner reported. Sometimes policy, plan, and administration changes must be considered at the same time employers are working their way through the Forms. We are able to review draft Forms prepared by employers, answer questions about Form entries, provide assistance to employers who need help gathering the appropriate information, and review/revise plan documents and eligibility policies where appropriate.

Note: Automatic and permissive extensions of time for filing Forms 1094 and 1095 will not apply to the extended due dates and employers who miss the extended deadlines may be subject to penalties for failure to timely file a return.

The IRS additionally included a transition rule for 2015 individual reporting—recognizing that, due to the extension for Forms 1094 and 1095, individuals may not receive their Forms 1095 before filing individual income tax returns. The transition rule provides that individuals (1) can rely upon other information received from employers and/or coverage providers about the offer of coverage; and (2) will not need to provide an amended personal income tax return after receiving a Form 1095 or corrected Form 1095.

Cadillac Tax Delayed and it is now Deductible

The PATH Act includes a two-year delay for an ACA excise tax on high-value employer-sponsored group health plans, called the Cadillac Tax. The Cadillac Tax applies to those health plans with benefits valued above \$10,200 for single coverage and \$27,500 for family coverage (indexed for inflation). The excise tax will be 40% and it was originally scheduled to commence in 2018. The PATH Act delay will now make the Cadillac Tax effective in 2020.

The PATH Act further modified the provisions of the excise tax to make it an IRS levy that is fully tax deductible to impacted employers. The change imposed by the PATH Act is unique because the vast majority of IRS excise taxes are non-deductible.

Notice 2015-87 - Broad Collection of ACA Loose Ends

The question and answer format of this recent IRS Notice covers quite a lot of information that were previously unanswered ACA compliance issues. Here are a few of the highlights:

- The Notice begins with market reform guidance related to health reimbursement arrangements (HRAs) and includes a section that further clarifies employer reimbursements for premium expenses of individual health insurance policies, including employer payment plans.
- The application of the adjusted 9.5% affordability threshold is clarified for purposes of identifying employee contributions to HRAs, flex credits, opt-out payments, and other fringe benefits.
- COBRA continuation coverage related to unused health flexible spending arrangement (health FSA) funds is clarified in addition to the permissible conditions that can be placed on carryover amounts.
- There is some clarification about relief from certain penalties (failure to timely file and failure to correct) for employers that make a good faith effort to comply with the ACA reporting requirements of Forms 1094 and 1095, at least with respect to offers of coverage made during 2015.

The Notice is full of new guidance and clarifications to tie up some loose ends for ACA compliance items. It is a gentle reminder that we are still operating in an ever-changing ACA legal environment and employers should seek out advisors who have the most current information.

For More Information

Contact Kristy Buckley at 406-522-4522 or kbuckley@crowleyfleck.com, or Sarah Loble at 406-457-2033 or sloble@crowleyfleck.com, if you would like more information.

If you require assistance with a particular employee benefit matter, or have questions or comments regarding this newsletter, please contact one of the attorneys listed below.

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