



IRS Delays Effective Date (to January 2014) by Which Small Employers Must Report Cost of Group Health Coverage on W-2's & Provides Additional Guidance

LEGISLATIVE BRIEF

April 7, 2011

IRS issued [Notice 2011-28](#), which delays *for smaller employers* the requirement to report the aggregate cost of employer-sponsored group health coverage on W-2s until January 2014 (the W-2 information reported will be the cost of coverage during the 2013 tax year). Small employers are defined as those who are required to file fewer than 250 2011 Forms W-2. Additionally, the IRS Notice provides guidance on what coverage and contributions should be included in the W-2 reporting and what should be excluded, provides examples of various methods of calculating the cost of coverage, specifies that calculations should be done monthly, and addresses other calculation issues such as mid-year changes and composite rates.

Background

The Patient Protection and Affordable Care Act (PPACA or ACA) section 9002 added section 6051(a)(14) to the Internal Revenue Code. This section generally requires employers to report the aggregate cost of applicable employer-sponsored group health coverage on Form W-2. This requirement is for informational purposes only; it does not affect the taxability of the coverage. As originally enacted, this requirement was effective for 2011 Form W-2s (which employers must provide to employees in January 2012). This date was delayed until January 2013 (the 2012 Form W-2) by [IRS Notice 2010-69](#), although employers may elect to voluntarily report the information on the 2011 Form W-2. Employers who elect to voluntarily report this aggregate cost information should report it in box 12 on Form W-2, using code DD.

Summary of Important Points in Notice 2011-28

- Small employers (defined as employers that are required to file fewer than 250 W-2s for 2011) will not be required to report the cost of employer-provided health coverage on any forms required to be furnished to employees until January 2014 (the 2013 Form W-2).
- Larger employers are required to start reporting the cost of employer-sponsored group health coverage on the 2012 Form W-2, which employers must provide in January 2013.

- For all employers, aggregate cost is determined under rules similar to the rules for determining the "applicable premium" for purposes of COBRA continuation coverage.
- For all employers, the cost of coverage is determined on a monthly basis, and the annual cost is calculated by aggregating the monthly costs. This automatically takes into account changes in the cost of coverage or in the benefit option elected during the year.
- Employers are not required to issue W-2s to report the cost of coverage provided to retirees or to other former employees who do not receive wages or salary in the current tax year and for whom the employer is not otherwise required to issue W-2s.
- If future guidance is more restrictive, it will not be applicable earlier than January 1 of the calendar year beginning at least six months after the date the future guidance is issued.

Cost and Types of Coverage that should be Reported on W-2s

The aggregate cost of group health plan coverage generally includes only group medical coverage, but it also includes dental and/or vision coverage if it is integrated into the group medical plan. The reportable cost generally includes both the employer-paid and the employee-paid portion of the cost, regardless of whether the employee paid for that cost through pre-tax or after-tax contributions. *Exception:* the aggregate reportable cost does *not* include employee pre-tax contributions to a Health FSA. The IRS Notice also specifies that the aggregate reportable cost includes the cost of coverage under the employer-sponsored group health plan for the employee and also for any person covered by the plan because of a relationship to the employee. The example in the Notice includes the employee's spouse and dependent children, as well as a 28-year old adult child.

Cost and Types of Coverage that should Not be Reported on W-2s

The following contributions and types of coverage should not be included in the aggregate cost amounts:

- Contributions to any Archer MSA
- Contributions to a health savings account (H.S.A.)
- Employee pre-tax contributions to health flexible spending arrangements (HFSAs)
- Amounts paid (by the employer or employee) for long-term care coverage,
- Amounts paid (by the employer or employee) for dental or vision coverage that is not integrated into the group medical plan,
- Amounts paid (by the employer or employee) for coverages described in IRC section 9832(c)(1), such as coverage for accident or disability income insurance, medical benefits insurance issued as a supplement to liability insurance or under auto liability insurance, workers' compensation insurance, credit-only insurance, or other similar insurance under which medical benefits are secondary or incidental to other insurance benefits).
- Coverage for specific diseases or illnesses (e.g., cancer policies) or hospital indemnity policies (such as AFLAC or Colonial Life voluntary policies).
- Employer contributions to a multiemployer plan for health coverage for employees.
- The cost of coverage under a Health Reimbursement Arrangement (HRA).
- The cost of coverage provided under a self-funded group health plan that is not subject to any federal continuation coverage requirements (e.g., a self-funded church plan).

- The cost of coverage provided by any governmental entity (federal, state, etc.) under a plan maintained primarily for members of the military or for their families.
- Excess reimbursements of highly compensated individuals (HCIs) under IRC section 105(h) are not added to or subtracted from the cost of group health coverage that is otherwise reportable on Form W-2, even though the excess reimbursements are included in income of the affected HCIs.

The IRS notice also clarifies that employers are not required to issue W-2s to report the aggregate cost of employer-sponsored health care to retirees or other former employees for whom the employer is not otherwise required to issue W-2s.

Employers Subject to the W-2 Reporting Requirement

The reporting requirement applies to all employers who provide applicable employer-sponsored coverage, including federal, state and local government entities, churches and religious organizations, and private sector employers. It does not apply to Federally-recognized Indian tribal governments.

Action Steps for Employers

If you file more than 250 Form W-2s for 2011, you are not a "smaller" employer and the delayed effective date does not apply to you. In 2012, you will have to calculate and aggregate the monthly cost of employer-sponsored health coverage for your employees and report that amount on the 2012 Forms W-2 that you provide to employees in January 2013. You should review this Notice 2011-28 for details on how to calculate the monthly cost, especially if you are self-funded or charge a composit rate for benefits.

If you do qualify as a "smaller" employer, you can breathe a sigh of relief! Or, if you just want the practice or don't want to feel left out, you can start voluntarily reporting for 2012 or even 2011.

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If you have questions, contact Lisa-Klinger@Leavitt.com.

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