



WHAT YOU NEED TO KNOW

## Compliance Recap

February 2018

February was a quiet month in the employee benefits world.

The Internal Revenue Service (IRS) updated its Questions and Answers about Information Reporting by Employers on Form 1094-C and Form 1095-C, its Questions and Answers on Information Reporting by Health Coverage Providers, and its Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act.

The IRS released its adjusted penalty amounts under the employer shared responsibility provisions for the 2018 calendar year. The IRS also released its Information Letter on COBRA HRA premium calculation. The IRS, the U.S. Department of Labor (DOL), and the U.S. Department of Health and Human Services (HHS) issued a proposed rule on short-term, limited-duration insurance.

### UBA Updates

UBA released one new advisor: [DOL Final Rule on Disability Claims Procedures: Eight Things to Know](#).

### IRS Updates Its Employer Information Reporting Q&As

The Internal Revenue Service (IRS) updated its [“Questions and Answers about Information Reporting by Employers on Form 1094-C and Form 1095-C.”](#) The IRS made one substantive change to the Q&As. At Q&A #5, the IRS provided the 2018 due dates for furnishing forms to employees and filing forms with the IRS.

For reporting in 2018 (for offers of coverage and coverage in 2017), an applicable large employer must furnish Form 1095-C to each full-time employee on or before March 2, 2018. This due date reflects a 30-day extension from the general due date (that is, January 31 of the year immediately following the calendar year to which the information relates); the extension was provided by the IRS in Notice 2018-06 on December 22, 2017. The extension applies automatically and does not require the submission of any request or other documentation to the IRS.

Generally, Forms 1094-C and 1095-C must be filed by February 28 of the year following the calendar year to which the return relates if filing on paper (or March 31 if filing electronically). The requirement to file Forms 1094-C and 1095-C is met if the forms are properly addressed and mailed on or before the due

date. If the due date falls on a weekend or legal holiday, then the due date is the following business day. A business day is any day that is not a Saturday, Sunday or legal holiday. Although the IRS extended the due date for furnishing Form 1095-C for 2017, the due date for filing Forms 1094-C and 1095-C with the IRS was not extended.

### **IRS Updates Its Q&As on Information Reporting by Health Coverage Providers**

The Internal Revenue Service (IRS) updated its [Questions and Answers on Information Reporting by Health Coverage Providers \(Section 6055\)](#) by adding questions 30 through 35. Among other items, the Q&As discussed IRS [Notice 2018-06](#) that extends the due date for furnishing the 2017 Form 1095-B to individuals to March 2, 2018.

Also, the IRS discussed short-term relief available from penalties for incomplete or incorrect returns [filed](#) with the IRS or [furnished](#) to individuals. For reporting in 2016, 2017, and 2018, the IRS will not impose penalties on employers that can show that they have made good faith efforts to comply with the information reporting requirements.

### **IRS Announces the Play-or-Pay Adjusted Penalty Amounts**

The Internal Revenue Service (IRS) updated its [Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act](#) to reflect adjusted penalty amounts for failures to offer coverage in the 2018 calendar year. For Penalty A (or the “no offer” penalty), the adjusted penalty amount per full-time employee is \$2,320. For Penalty B (or the “inadequate coverage” penalty), the adjusted penalty amount per full-time employee is \$3,480.

### **IRS Releases Information Letter on COBRA HRA Premium Calculation**

The Internal Revenue Service (IRS) released its [Information Letter 2017-0027](#), which discusses how an employer determines a COBRA premium for a health reimbursement arrangement (HRA).

Under COBRA, an employer can charge a premium that is equal to the plan’s cost of the coverage for similarly situated beneficiaries to whom a qualifying event has not occurred, plus two percent for administrative expenses. COBRA permits the plan administrator to choose between one of two methods for determining COBRA premiums for the HRA. The applicable premium can be calculated either on an actuarial basis, or on a past cost basis.

### **IRS, DOL, and HHS Issue Proposed Rule on Short-Term Limited-Duration Insurance**

The Internal Revenue Service (IRS), the U.S. Department of Labor (DOL), and the U.S. Department of Health and Human Services (HHS) issued a [proposed rule](#) to amend the definition of short-term, limited-duration insurance for purposes of its exclusion from the definition of individual health insurance coverage.

Short-term, limited-duration insurance is designed to fill temporary gaps in coverage that may occur when an individual is transitioning from one plan or coverage to another. Because short-term, limited-duration insurance is not individual health insurance coverage, it is exempt from individual market requirements.

Under current regulations, short-term, limited duration insurance cannot provide coverage for three months or longer (including any renewal periods) and a specific written notice must be included in the contract and any application materials provided as part of enrollment.

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The proposed rule would expand the potential maximum coverage period by nine months. The proposed rule would also revise the required notice that must appear in the contract and any application materials for short-term, limited-duration insurance.

Public comments are due by April 23, 2018.

### Question of the Month

**Q.** When the plan changes, when should I give notice to participants?

**A.** Depending on the change that is made, an employer must provide notice within one of three time frames:

- 60 days prior to the change
- No later than 60 days after the change (or, within 60 days of the change)
- Within 210 days after the end of the plan year

For modifications to the summary plan description (SPD) that constitute a material reduction in covered services or benefits, notice is required within 60 days of adoption of the material reduction in group health plan services or benefits. For example, a decrease in employer contribution would be a material reduction in covered services or benefits so notice should be provided within 60 days of the change in employer contribution. As a best practice, an employer should give advance notice of the change. For practical purposes, employees should be told prior to the first increased withholding.

If a plan makes a material modification in any of the plan terms that would affect the content of the most recently provided summary of benefits and coverage (SBC), then notice must be provided no later than 60 days prior to the date on which the modification will become effective.

However, if the change is part of open enrollment, assuming you communicate the change during open enrollment, the open enrollment communication is considered acceptable notice, regardless of whether the SBC or the SPD, or both, are changing. Open enrollment is essentially a safe harbor for the 60-day prior/60-day post notice requirements.

Finally, changes that do not require more immediate notifications, because they do not affect the SBC and are not a material reduction in benefits, must be communicated through a summary of material modifications or an updated summary plan description within 210 days after the end of the plan year.

3/5/2018

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