



EMPLOYEE BENEFITS UPDATE

February 17, 2016

Recent ACA Guidance Provides Needed Relief for Health and Welfare Plan Sponsors

Executive Summary

Recent changes relating to the Affordable Care Act (the “ACA”) will impact your company’s health and welfare arrangements:

- The IRS recently released Notice 2016-4, which extends the due dates for the ACA information reporting forms for health plans. The forms must now be furnished to individuals by March 31, 2016 and filed with the IRS by May 31, 2016 (if not filing electronically) and by June 30, 2016 (if filing electronically).
- The President signed into law a two-year delay in the application of the “Cadillac” tax, pushing its effective date from January 1, 2018 to January 1, 2020.
- The President also approved the repeal of an ACA provision that would have required that certain large employers implement automatic enrollment procedures for their health coverage.

What You Should Do

- For sponsors of self-insured health plans subject to the ACA’s information reporting requirements, make sure processes are in place to gather, analyze and report the information required by the IRS forms in a timely manner, based on the new due dates.
- For sponsors of insured health plans subject to the ACA’s information reporting requirements, make sure your health insurance issuers are prepared to meet their reporting obligations in a timely manner.
- Review your health and welfare plans to determine whether and how they will be affected by the eventual implementation of the Cadillac tax. To the extent your plans are or may become subject to the tax, consider strategies that may minimize or eliminate the impact of the tax.

Extension of Due Dates for ACA Information Reporting Forms

As many employers know and as we have discussed previously in our March 2014 and February 2015 Employee Benefits Updates¹, the ACA established information reporting requirements obliging health insurance issuers, self-insured employers and certain other entities to provide individual and collective information regarding health coverage under their health plans to both the IRS and individual plan participants. The new IRS forms that must be used to meet these requirements have proven challenging for health insurance issuers and self-insured employers to complete, and many reporting entities expressed concern with the early 2016 deadlines. To provide some relief, the IRS recently published IRS Notice 2016-4, which extends the due dates by a few months:

- IRS Forms 1095-B and 1095-C must now be furnished to individuals by **March 31, 2016** (previously February 1, 2016); and
- IRS Forms 1094-B, 1095-B, 1094-C and 1095-C must now be filed with the IRS by **May 31, 2016** if not filing electronically (previously February 29, 2016) or **June 30, 2016** if filing electronically (previously March 31, 2016).

While the extended due dates give reporting entities additional time to implement systems and procedures to gather, and report the information required by the new forms, the IRS has indicated that reporting entities should furnish the statements to individuals and file the information returns with the IRS as soon as they are ready.

The IRS also took the opportunity to reinforce that failing to comply with the extended due dates will subject reporting entities to penalties (generally \$250 per statement up to a maximum of \$3 million per calendar year). Employers subject to the ACA reporting requirements should make every effort to meet these extended deadlines, as the IRS has indicated that it will not impose penalties for incorrect or incomplete information in this first year, provided that the reporting entities meet the new deadlines and can show that they made good faith efforts to comply.

Delay in Application of the “Cadillac” Tax

The Cadillac tax is a revenue-raising component of the ACA that would impose a 40 percent excise tax on employer-sponsored health care coverage that exceeds certain annual indexed dollar limits. For context, the current limits are set at \$10,200 for individual coverage and \$27,500 for family coverage, but those figures will be updated before the tax takes effect, will be indexed for inflation thereafter, and may also be adjusted for other factors such as age, gender, retiree status and possibly geographic differences. The Cadillac tax considers a wide range of health and welfare benefits an employer may provide, including the actuarial value of the cost of coverage, employee and employer flexible spending account contributions and employer health savings account contributions to name a few. Commentators frequently describe the tax as applying to the most extravagant health and welfare arrangements, but many employers have been surprised to find that it would apply to their current benefit arrangements.

In light of increasing political opposition to the “Cadillac” tax, the President recently signed into law the Consolidated Appropriations Act, 2016 (the “Act”), an omnibus spending bill that includes a two-

¹ See [“New Information Reporting Requirements under the Affordable Care Act”](#) (March 2014) and [“Time to Prepare for New Affordable Care Act Information Reporting Requirements”](#) (February 2015).

year delay in the Cadillac tax’s application. The tax, which was originally scheduled to go into effect on January 1, 2018, now will not be effective until January 1, 2020 at the earliest.

Under the Act, the tax would be tax deductible, which may make it more palatable for some employers, but you should nonetheless take the time to review your health and welfare arrangements and determine whether the eventual imposition of the Cadillac tax will affect you, and what planning strategies you may wish to implement in order to minimize or avoid the tax.

Repeal of Automatic Enrollment Requirement

The ACA amended the Fair Labor Standards Act (the “FLSA”) to include a requirement for employers that are subject to the FLSA, and that have 200 or more full-time employees, to automatically enroll new full-time employees in one of the employer’s health plans and continue enrollment of current employees during open enrollment, subject to any permissible waiting period. The automatic enrollment requirement would also require employers to provide employees with certain notices and give them the chance to opt out of any automatically enrolled coverage. While these concepts were established by statute, many administrative questions remained in the absence of government regulations, including how to define full-time employees, how dependents and employees covered by a spouse’s plan would be treated and when the requirement would take effect.

In a move welcomed by employers, the President recently signed into law the Bipartisan Budget Act of 2015 which, among other things, repealed the health coverage automatic enrollment requirement. In light of the repeal, employers can rest assured that they will not be required to automatically enroll employees in health plans in the near future. Nonetheless, some employers are choosing to pursue automatic enrollment options as a voluntary design feature and a way of helping their employees avoid the ACA’s individual mandate, which imposes a tax penalty on individuals who are not enrolled in health coverage.

If you have any questions about how these recent ACA developments impact your health and welfare plans, or about the ACA more generally, please let us know.

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