MARSH & McLENNAN AGENCY

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IRS RELEASES FINAL VERSIONS OF FORMS 1094/1095 B & C AND INSTRUCTIONS FOR 2017

The Internal Revenue Service (IRS) released final versions of the 2017 Form 1094-C, 1095-C, 1094-B, and 1095-B, along with Final Instructions (Instructions). As a reminder, Form 1094-B and Form 1095-B are used to report certain information about individuals covered by minimum essential coverage (MEC), and Form 1094-C and Form 1095-C are used to report employer offers of coverage to employees.

Important Dates for 2018

Previously, the IRS extended the deadline for furnishing Form 1095-C and Form 1095-B to employees/insureds to March 2, 2017. However, for 2017, entities should be prepared to file these Forms by the standard filing deadlines. These deadlines are as follows:

- January 31, 2018: Deadline to furnish to an employee their 2017 Form 1095-C (Applicable Large Employers) and Form 1095-B (insurance providers)
- February 28, 2018: Deadline to file Forms 1094/1095 B & C, if filing on paper
- April 2, 2018: Deadline to file 1094/1095 B & C, if filing electronically. Entities filing 250 or more returns **must** file electronically

B Forms

There are no substantive changes to the B Forms for 2017. For 2017, insurers in the Marketplace are encouraged to, but not required to, report catastrophic coverage using the B Forms.

C Forms

Form 1094-C

As noted in the draft forms, the box for "Section 4980H Transition Relief" in Line 22 "Certifications of Eligibility" has been removed, along with the corresponding column in Part III of the Form.

Form 1095-C

No substantive changes were made to this Form. A new paragraph entitled "Additional Information" was added in the "Instructions for Recipients" section that refers recipients to a new IRS webpage detailing the individual shared responsibility provisions, employer shared responsibility provisions, and premium tax credits provisions. This webpage also contains contact information for the IRS Healthcare Hotline.

Instructions

Since there is no Section 4980H transition relief available for 2017, the Instructions have been revised to remove discussion of Section 4980H transition relief.

The Form C Instructions reiterate that the field indicating "plan start month" continues to be optional on the Form 1095-C. Also, the Instructions note that a Form 1095-C filed with incorrect dollar amounts on Line 15, may not require correction by an employer, so long as it is considered a "de minimis error." The Instructions define "de minimis error" as an error that is no more than $100 above or below the correct amount.

This is informational only, and is not intended to serve as legal, tax or financial advice. You should consult with our qualified legal, tax, or financial advisor before making any changes to your plan.

IRS Releases Final Versions of Forms 1094/1095 B & C Forms and Instructions for 2017 (continued)

The Instructions include the adjusted inflation percentages to the affordability threshold, which is 9.66% for plan years beginning in 2016, and 9.69% for plan years beginning in 2017.

The Form C Instructions also extend the existing interim relief for multiemployer plans for another year. This means that ALEs who qualify for this relief will not need to obtain eligibility and other information from multiemployer plans for their 2017 filings.

Please note that there is no specific code to enter on Line 16 when an employee was offered MEC, but declined coverage.

Action Required

Employers subject to the reporting requirements should begin to prepare their 1094/1095-C Forms for the 2017 tax year. Despite continued attempts to repeal, replace, or change provisions of the Affordable Care Act, no changes have been made to the reporting requirements at this time.

For complete details, see:

Form 1094-B, here: https://www.irs.gov/pub/irs-pdf/f1094b.pdf

Form 1095-B, here: https://www.irs.gov/pub/irs-pdf/f1095b.pdf

Form 1094/1095-B Instructions: https://www.irs.gov/pub/irs-pdf/i109495b.pdf

Form 1094-C, here: https://www.irs.gov/pub/irs-pdf/f1094c.pdf

Form 1095-C, here: https://www.irs.gov/pub/irs-pdf/f1095c.pdf

Form 1094/1095-C Instructions, here: https://www.irs.gov/pub/irs-pdf/i109495c.pdf

For additional information and FAQs, see: https://www.irs.gov/affordable-care-act/employers/questions-and-answers-about-information-reporting-by-employers-on-form-1094-c-and-form-1095-c

IRS ANNOUNCES PCORI FEE INCREASE

On October 6, 2017, the Internal Revenue Service (IRS) issued IRS Notice 2017-61 which announces the updated Patient-Centered Outcomes Research Institute (PCORI) fee. The fee of **$2.39** per covered life applies to all policy and plan years **ending on or after October 1, 2017, and before October 1, 2018**. However, for policy and plan years **ending on or after October 1, 2016 and before October 1, 2017**, the PCORI fee is **$2.26** per covered life. Plan sponsors of self-insured group health plans must pay the PCORI fee using Form 720, and submit both the Form 720 and their payment to the IRS by July 31st of the calendar year immediately following the end of their plan year.

Action Required

Although no immediate action is required, plan sponsors with plan years ending on or before December 31, 2017 will need to determine the average number of covered lives participating in their policy or plan, and pay the correct PCORI fee amount by **July 31, 2018**.

For IRS Notice 2017-61, see: https://www.irs.gov/pub/irs-drop/n-17-61.pdf

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DOL EXTENDS THE APPLICABILITY DATE OF THE FINAL RULE FOR CLAIMS PROCEDURES FOR DISABILITY BENEFITS

On October 12, 2017, the Department of Labor (DOL) issued proposed regulations to delay the applicability of the Final Rule on the claims procedure requirements for ERISA covered disability benefit plans. Originally, the Final Rule applied to all disability benefits claims filed on or after January 1, 2018. These proposed regulations delay the applicability date of the Final Rule for a period of ninety (90) days (to April 1, 2018). As a reminder, the Final Rule applied certain ACA protections to disability coverage claims procedures, in order to make the claims denial process more regulated and uniform.

No Action Required

Although no immediate action is required, plan sponsors of disability plans may want to consult with legal counsel as to whether the delay of these rules impacts any future decision making as it relates to future disability claims filed by employees.

For RIN 1210-AB39, see: https://www.gpo.gov/fdsys/pkg/FR-2017-10-12/pdf/2017-22082.pdf

IRS NO LONGER ALLOWS HEALTH COVERAGE QUESTION TO BE “SILENT” ON INDIVIDUAL TAX RETURNS

On October 13, 2017, the Internal Revenue Service (IRS) issued guidance to individuals on the upcoming 2018 tax season. The guidance states that, despite previously allowing individuals to file their tax returns in 2017 without having to respond to the question regarding whether or not that individual had coverage for all twelve (12) months of the previous year, this year the IRS will not accept a tax return unless the taxpayer indicates whether they had health coverage for all twelve (12) months of the previous calendar year. As a reminder, this question would indicate to the IRS whether an individual is subject to a penalty under the Individual Mandate.

No Action Required

Although no immediate action is required, plan sponsors may want to advise employees that if an individual does not enroll in employer-sponsored coverage, and he/she does not enroll in any health coverage for that year, they must notify the IRS on their tax returns that they failed to enroll in Minimum Essential Coverage for all twelve (12) months of the previous year, and may be subject to penalties.

For the IRS guidance, see: https://www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals

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RHODE ISLAND ENACTS PAID SICK AND SAFE LEAVE LAW

On September 19, 2017, the Rhode Island General Assembly passed the Healthy and Safe Families and Workplaces Act ("Act"), which requires covered employers to provide employees in Rhode Island paid sick and safe leave each year. The Governor of Rhode Island is expected to sign the Act, which will go into effect on July 1, 2018.

Covered Employers

The Act applies to employers that employ eighteen (18) or more employees in Rhode Island. The Act does not apply to the Federal government.

Covered Employees

The Act generally applies to all employees of a covered employer, except employees employed by a municipality or the state, independent contractors, federal work-study participants, and certain licensed nurses employed by a health care facility that work a non-regular schedule based on their availability.

Accrual, Caps, and Carryover of Sick and Safe Time

Accrual

Covered employees begin to accrue paid sick and safe time on the first day of employment; or July 1, 2018, whichever date is later. Employers can choose to provide employees paid sick and safe time either through an accrual method, or a frontloading method. Under the accrual method, employees accrue one (1) hour of paid sick and safe time for every thirty-five (35) hours worked. Under the frontloading method, an employer provides an employee sick and safe time at the beginning of the calendar year, up to the amount that the employee would be expected to accrue during that year.

The Act also provides additional methods for the accrual of paid sick and safe time, other than the above methods. However, due to the complicated nature of the alternative methods for employee accrual of time under the Act, employers who would like more information regarding this alternative method should consult with their labor and employment counsel.

Annual Caps

The Act allows an employer to restrict the maximum amount of paid sick and safe time an employee can accrue per year, as follows:

- Twenty-four (24) hours for the 2018 calendar year
- Thirty-two (32) hours for the 2019 calendar year; and
- Forty (40) hours for the 2020 calendar year and thereafter.

An employer may choose to have a higher annual limit on the accrual and use of paid sick and safe time than the Act provides.

Carryover

Employees are permitted to carryover accrued but unused paid sick and safe time to the following calendar year, up to the annual limits mentioned above. However, instead of allowing carryover of unused sick and safe time, an employer may choose to pay out an employee for accrued but unused sick time at the end of the year. An employer is **not** required to pay an employee for accrued but unused sick time if that employee is terminated, resigns, retires, or otherwise separates from the employer.

If an employer already offers a paid leave policy that meets the requirements of this Act, or the employer offers unlimited paid leave, then the employer is exempt from the accrual, carryover, and use requirements of this Act.

Loaning Sick and Safe Time

An employer may choose to loan paid sick and safe leave to an employee in advance of the employee accruing that time.

Permitted Uses of Sick and Safe Time

An employer can impose a ninety (90) day waiting period before a newly hired employee is permitted to **use** accrued sick and safe time. If the employee is a temporary or seasonal employee, they may be subject to a 180 day waiting period before they are permitted to use accrued paid sick and safe leave.

Employees may use paid sick and safe time for the following reasons:

- An employee or family member's mental or physical illness, injury, or health condition, or the need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition
- An employee or family member's need for preventative medical care

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Rhode Island Enacts Paid Sick and Safe Leave Law (continued)

- Closure of the employee's place of business, or employee's child's school or place of care, by order of a public official due to a public health emergency
- Care for employee or family member when health authorities or a health provider have determined the employee or family member's presence in the community will jeopardize the health of others; and
- Employee or family member has been the victim of domestic violence, sexual assault, or stalking.

"Family member" is defined as a child, parent, spouse, mother-in-law, father-in-law, grandparents, grandchildren, domestic partner, sibling, care recipient, or member of the employee's household. A "care recipient" is defined in the Act as a person to which the employee is responsible for providing or arranging health or safety-related care.

An employer may not require an employee to find a replacement worker as a condition of that employee using accrued sick or safe leave.

Request and Notice for Use of Sick and Safe Time

An employee can request the use of safe and sick time orally, in writing, or electronically, and the employer must allow the employee to use accrued sick and safe time upon such request. If possible, the employee should include the expected duration of his/her absence in the request.

An employee should provide the employer advance notice of the need for use of sick and safe time when that need is foreseeable. If the employer requires advance notice when the need for use of sick and safe time is foreseeable, the employer must have and provide employees a written policies and procedures for how the employee must provide the advance notice.

If an employee uses more than three (3) consecutive days of paid sick and safe leave, an employer may require that employee to provide reasonable documentation (e.g., signed document by heath care professional that sick leave is necessary, police report, or court document) that the use of such leave was for a permitted reason. In order to require reasonable documentation, an employer must have notified the employee of this requirement in writing prior to the employee's use of the paid sick and safe time. The employer may not require that the documentation include the nature of the illness or details of the domestic violence, sexual assault, or stalking. An employer may also require written documentation if an employee uses sick leave within two (2) weeks prior to the final day of work before termination.

Enforcement and Violations

Any employer who violates the Act is subject to a minimum civil penalty of $100 for the first violation, and that penalty can increase for each subsequent violation.

Action Required

Employers with eighteen (18) or more employees in Rhode Island should review their sick leave policies with their legal counsel, to ensure their policies are in compliance with this Act. If an employer's policies are not in compliance with the Act, an employer should revise those policies, as necessary.

For the text of the Act, see:

http://webserver.rilin.state.ri.us/BillText/BillText17/HouseText17/H5413Baa.pdf

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QUESTION OF THE MONTH

Can Our Company's DCAP Reimburse Day-Care Expenses for a Child of an Employee's Domestic Partner?

QUESTION: One of our DCAP participants has asked to be reimbursed for day-care expenses for her domestic partner's child. Can our DCAP reimburse these expenses?

ANSWER: Dependent care expenses, such as day-care expenses, for the child of an employee's domestic partner who is not also a child of the employee ordinarily will not qualify for reimbursement from a DCAP. This is because benefits under a DCAP are available only with respect to "qualifying individuals" of an employee, and such a child is unlikely to be a qualifying individual.

For DCAP purposes, a person cannot be a qualifying individual unless, as a threshold matter, the person is either the spouse or tax dependent of the employee. And to be a tax dependent, the individual must be either a "qualifying child" or a "qualifying relative" as defined by the Code. (A modified definition applies under the DCAP rules.) A child living in the employee's household could be considered a qualifying relative if certain other requirements are met, but not if the child is the qualifying child of another taxpayer (e.g., the domestic partner or the child's other parent). A domestic partner's child who lives with the employee and domestic partner is likely to be a qualifying child of the domestic partner and, if so, would not be the employee's qualifying relative.

Note that under IRS guidance, a domestic partner's child is not a qualifying child of the domestic partner if the domestic partner (or any other person with respect to whom the child potentially would be a qualifying child, such as the child's other parent) is not required to file a federal income tax return and either does not file or does so solely to obtain a refund of withheld income taxes. An unrelated child living with an employee might be the employee's qualifying relative under this guidance, although additional requirements would have to be met for the child to be the employee's qualifying individual (e.g., the child would have to be physically or mentally incapable of self-care).

Source: EBIA

CONTACTS

Christopher K. Bao, Esq.
Manager, Employee Benefits Compliance
& Regulatory Affairs, MMA West
Chris.Bao@MarshMMA.com
+1 415 230 7224

Brittany D. Botterill, Esq.
Manager, Employee Benefits Compliance
& Regulatory Affairs, MMA West
Brittany.Botterill@MarshMMA.com
+1 858 587 7511

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