

## **Labor & Employment Client Alert** **February 2015**

### **IRS Issues Final Forms and Instructions for Fulfilling Employer Reporting Requirements under the ACA**

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The Affordable Care Act (“ACA”) includes a requirement that certain employers annually file with the Internal Revenue Service (“IRS”) information related to health care coverage offered to employees. After releasing draft forms and instructions in July and August, 2014, the IRS has recently issued the final forms and instructions. The final forms remained largely unchanged from the draft forms.

The ACA reporting requirement originally required applicable employers to file their information for 2014 in early 2015, but the delay in implementing the employer pay or play penalty also affected the reporting requirements. Reporting by applicable employers is now voluntary for 2014 and required beginning with the reporting of 2015 information in early 2016. Reporting requirements are intended to provide transparency for health coverage and costs and to help the government in administering the pay or play mandate.

Applicable Large Employers (“ALEs”) with fully insured plans are required to file Forms 1094-C and 1095-C. ALEs are employers with 50 or more full-time equivalent employees, *i.e.*, those employers subject to the ACA’s pay or play requirements. Form 1094-C is a transmittal form used in transmitting the more substantive Form 1095-C. ALEs with insured plans must complete parts I and II of a separate Form 1095-C for each full-time employee, but they do not have to complete Part III. Form 1095-C requires reporting of the following information:

- Employer’s name address and EIN
- Name and telephone number of employer’s contact person
- Calendar year for which information is reported
- Certification of offer of MEC under employer’s plan to all full-time employees by month
- Months that MEC under the employer’s plan was available
- Employee share of the premium for the lowest cost employee only employer plan providing minimum value offered to each full-time employee
- Number of full-time employees for each month during the calendar year

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- Name, address and taxpayer ID number for each full-time employee during the calendar year and the months (if any) during which the employee was covered under an eligible employer-sponsored plan during the year.

All employers with self-insured plans must report, even if they do not qualify as ALEs. ALEs with self-insured plans should use Forms 1094-C and 1095-C, while employers with self-insured plans who do not qualify as ALEs will use Forms 1094-B and 1095-B. In addition to the information listed above for insured plans, ALEs with self-insured plans must also complete Part III of Form 1095-C and other employers with self-insured plans must complete Form 1095-B, reporting:

- The name address and Social Security Number for each individual covered under the plan (not just employees)
- For each covered individual, the months for which, for at least one day, the individual was enrolled in coverage and entitled to receive benefits.

Each full-time employee must be provided with a copy of the Form 1095-C (or 1095-B) relating to that employee. These Employee Statements can be mailed by first class mail to the individual's last known permanent address or temporary address if no permanent address is known. Employee Statements can also be included in the mailing of Forms W-2.

Reporting to the IRS is due by February 28 of each year (or March 31 if filing electronically). Employee Statements must be provided to full-time employees by January 31 of each year. Filing is voluntary in 2015 for the 2014 calendar year, but the first required filings will be in 2016 for the 2015 calendar year. ALEs with 250 or more Forms 1095-C to file must file electronically.

Penalties for failure to comply include \$100 for each statement not filed or filed improperly up to a maximum of \$1.5 million per year. The IRS, however, has stated that it will not issue penalties for calendar year 2015 reporting for those employers that show a good faith effort to comply.

It is recommended that employers subject to reporting requirements check with their payroll office or payroll vendor to make sure they have capabilities in place to capture all information they will need to report for 2015.

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