

OP-ED: An employee benefits grab bag to start 2017 with style

By: Iris Tilley in Compliance Corner January 26, 2017 11:12 am



Iris Tilley

This column is being written on Jan. 20 – Inauguration Day – and it is going to discuss the Affordable Care Act (ACA). That's a recipe for immediate obsolescence, right? Perhaps, but the more likely outcome is that we will see the ACA rules on the books for a few months while possibilities for repeal and replacement are considered, and a full repeal is tabled while a replacement plan is finalized. Accordingly, I am rolling the dice and providing ACA guidance on the eve of what may ultimately be the end to the federal statute – at least as we know it. With that in mind, I have assembled the top 5 benefits questions that have come my way in the past 30 days.

1. Do I really have to file and distribute my ACA reporting forms?

Yes. Despite the ongoing dialogue about plans to repeal and replace the ACA, reporting remains on the books. Covered employers accordingly must provide Forms 1095-C to their employees on or before March 2, 2017 (this is an extended deadline). The forms are due to the IRS by Feb. 28, 2017 for paper forms and March 31, 2017 for electronic filings. Filers may obtain an automatic 30-day extension to the filing deadline by filing Form 8809 on or before the regular due date, but filing Form 8809 does not extend the March 2, 2017 deadline for getting forms in the hands of employees.

The good faith penalty relief that applied to filings for the 2015 tax year continues to apply to the filings for 2016 that employers are preparing now.

As a reminder, the ACA reporting requirements apply only to those employers with 50 or more full-time equivalent employees in the tax year that preceded the reporting year (2015 for the reports employers are filing now).

2. What happens if I don't file and distribute my ACA reporting forms?

An employer large enough to fall under the reporting rules that doesn't file may be penalized. The stated penalty is \$250 for each return for which the failure occurs, with a maximum penalty of \$3 million.

3. What do I do if I get a notice from a health care exchange telling me that an employee got subsidized coverage?

If an exchange notice is issued, the first question is whether the employee listed in the exchange notice was eligible for health coverage. If the employee was not eligible for coverage under the employer's health plan, nothing needs to be done. However, if the employee was eligible for health coverage, and it's affordable and otherwise meets the ACA minimums, let the exchange know. The process varies a bit from state to state, but the letter from the exchange will detail appeal rights. Raise an appeal if an employee listed on an exchange notice was eligible for the employer's coverage because failing to do so could put the company at risk for a penalty for failing to provide coverage.

4. I keep hearing about wellness programs. Did something change?

The Equal Employment Opportunity Commission published final wellness program regulations in fall 2016. A notice requirement under these regulations took effect as of an employer's first plan year beginning on or after Jan. 1, 2017. The notice is required in instances when an employer offers a wellness program that requires a medical exam (think biometric screening) or asks health-related questions that could disclose a disability (think health risk assessment). A model notice is available at: www.eeoc.gov/laws/regulations/ada-wellness-notice.cfm.

5. Can I just give my employees money to buy coverage on the health care exchanges?

Generally, IRS guidance prohibits an employer from purchasing coverage on the individual market (including exchange coverage) for an employee. However, in December 2016, President Obama signed into law legislation tha

changes this for small employers. A small employer here is an employer that is too small to fall under the ACA reporting and shared responsibility rules. (This means that the employer had fewer than 50 full-time equivalent employees in the preceding tax year. For 2017, the relevant employee count is this January-December of 2016.)

The new legislation allows these small employers to sidestep the general prohibitions on the purchase of individual health coverage for an employee through a health reimbursement account (HRA). The HRA must be implemented with 90 days' notice to employees, so it came too late in the game for many small employers to consider it for 2017 but it could offer a viable alternative for small employers still looking at coverage options for this year.

Iris Tilley is a partner at Barran Liebman LLP. She advises employers about all aspects of employee benefits, including ACA compliance. Contact her at 503-276-2155 or itilley@barran.com.

