

# Insights

## IRS Provides Year-End Gift

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January 1, 2018

The Internal Revenue Service (IRS) issued a late December gift to employers (and other coverage providers) by extending a rapidly approaching due date to furnish health care coverage information to employees (or other affected individuals). Notice 2018-06 (Notice) pushes the deadline for employers to furnish Forms 1095-B, *Health Coverage* and the 1095-C, *Employer-Provided Health Insurance Offer and Coverage* to individuals from January 31, 2018 to March 2, 2018. The forms are generally used by employees and others to calculate whether they are eligible for a premium tax credit on their tax return. However, the IRS stated that the needed information can be obtained from other sources, so this deadline extension should not impede individuals from timely filing their tax returns.

Note that employers are not only required to furnish information to individuals, but also, file returns with the IRS reporting health care coverage data. The deadline extension does not apply to forms required to be filed with the IRS. The extension only applies to furnishing the forms to employees (or other affected individuals). Filers required to complete Forms 1094-B (transmittal used to submit 1095-B returns) and 1094-C (transmittal used to submit 1095-C returns) must file the transmittals and returns with the IRS by February 28, 2018, unless the forms are filed electronically in which case the due date is April 2, 2018.

The Notice also includes penalty relief for failures by employers to accurately or completely file or furnish information as required by the Affordable Care Act (ACA). Under the ACA, if the required forms are not completely accurate or are missing information, penalties apply. Although employers should breathe a little easier upon receipt of this relief from the IRS, it must be noted that the relief from penalties will only be granted in cases where employers can prove that they made a "good faith effort" to comply with the ACA requirements.

### **Background**

The ACA requires employers (and other issuers of health insurance) to file IRS information returns and furnish such information to employees annually. The IRS then uses the data provided to administer the employer shared responsibility provisions of the ACA as well as to determine whether a taxpayer is eligible for a premium tax credit. The gathering of such information for employers and other providers can be cumbersome and time consuming. The difficulty for employers in acquiring the data results from the ACA reporting requirement still being relatively new, so processes and procedures for collecting the data are still being implemented and modified.

In addition to the reporting requirements, the Internal Revenue Code imposes penalties for the failure to accurately or completely report information. However, recognizing that the reporting entities must create new processes and procedures to obtain the needed information the IRS granted transition relief from such penalties initially in 2015. The IRS stated in the Notice that the grant of an extension of such transition relief

for the 2017 filing year is also appropriate due to the ongoing challenges employers face in developing procedures and systems to collect the necessary data.

### **What Should Employers Do Now?**

Employers must, rigorously, embark on or continue data collection efforts. The IRS stated in its Notice announcing the extension that employers “are encouraged to furnish 2017 statements as soon as they are able.” The IRS “encouragement” statement should be viewed as an important indicator as to how the IRS may determine the amount of penalties, if any, to impose on an employer who failed to accurately and completely file its information forms. As part of its “good faith effort” review the IRS will, undoubtedly, include an analysis of whether the employer delayed, unnecessarily, the commencement of its data collection efforts.

Below are several concrete steps that employers should take with respect to completing the ACA information returns.

- Carefully consider what processes and procedures can be implemented or modified over the upcoming year that would result in next year’s data collection being more efficient and effective. Note that the IRS foreshadowed in its Notice that the current deadline and penalty relief is not expected to be granted for the 2018 filing year. This means that if an employer finds itself relying on this relief, new methods must be put into place to shorten the time frame utilized for next year.
- Communicate with service providers (for example, claims processors) to clearly understand when the provider will be transmitting needed data. If delays are expected, employers need to fully investigate and determine the cause and remedy for such delays. Again, these steps will go a long way in preparing for a smoother process next year.
- Notify employees of the delayed due dates for furnishing information. This step will help prevent human resource departments from being bombarded with inquiries about when the forms will be delivered. Employers can also reassure employees that they may go ahead and file their tax returns by sharing the IRS’ statement with their workforce that “taxpayers do not need to wait to receive Forms 1095-B and 1095-C before filing their returns.”

The Notice is located [here](#).

If you have any questions regarding the filings discussed in this bulletin, please contact a Krieg DeVault employee benefits attorney.