The Affordable Care Act Form 1095-C Reporting and Disclosure Requirements for Applicable Large Employers

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The Patient Protection and Affordable Care Act ("ACA"), like a LEGO® structure, is made up of many interlocking pieces. Consequently, the United States Supreme Court's recent decision in *King v. Burwell*, regarding individual tax credit/premium subsidies for coverage under a qualified health plan, had ramifications for employers as well as individuals. The Court's decision regarding the extent of the availability of the premium subsidy also decided the extent of the requirement for individuals to maintain minimum essential coverage (sometimes called the "individual mandate") and the employer "shared responsibility" rules (sometimes called the "pay or play" rules). The decision in *King* also confirmed the reach of the reporting requirements that will provide the foundation for the Internal Revenue Service's administration of the premium subsidy, the "individual mandate" and the employer shared responsibility rules.

This *Update* focuses on the reporting and disclosing obligations of applicable large employers ("ALEs") that are subject to the employer shared responsibility rules. Generally, an ALE is an employer with at least 50 full-time or full-time equivalent employees. The reporting and disclosure requirements, along with the reporting obligations of insurers and employer sponsors of self-funded health plans, are at the heart of the IRS's administration of the interlocking pieces of the ACA.

Impact of *King* Decision on Employer Shared Responsibility Rules

A thorough review of the employer shared responsibility rules is beyond the scope of this article. Briefly, the rules impose a penalty on an ALE if: 1) the ALE has not made available to its full-time employees (primarily, employees who work at least 30 hours per week) affordable minimum essential coverage that provides health coverage of a "minimum value," as defined in the statute and regulations, and 2) at least one of the ALE's full-time employees receives subsidized coverage on "an Exchange established by the State." It has always been clear that the premium subsidy is available to individuals who purchase health insurance through one of the state Exchanges and, therefore, that the shared responsibility rules apply to employers with employees in any of the 13 states and the District of Columbia that maintain their own Exchanges. By clarifying that the premium subsidy is also available in the 37 states that do not operate their own Exchanges, the Supreme Court's decision in *King* also clarified the application of the shared responsibility rules and reporting and disclosure obligations for employers with employees in any of those 37 states.

Effective Dates
With respect to ALEs with at least 100 full-time or full-time equivalent employees, the employer shared responsibility rules have been in effect since January 1 of this year. The rules are scheduled to go into effect on January 1, 2016 for ALEs that have fewer than 100, but at least 50, full-time or full-time equivalent employees. ***Note: The 2015 transition relief for ALEs with fewer than 100, but at least 50, full-time or full-time equivalent employees only applies to liability under the shared responsibility rules. All ALEs, including those who qualify for the 2015 transition relief from the shared responsibility rules, must comply with the reporting and disclosure requirements described below for years beginning on or after January 1, 2015.***

ALE Reporting and Disclosure Requirements
For years beginning with 2015, section 6056 of the Internal Revenue Code (the "Code") requires that an ALE that is subject to the employer shared responsibility provisions annually furnish a statement to its full-time employees regarding the health care coverage, if any, provided to the employee and his or her family members during each month of the year. Employees and their family members may use this information to prove their compliance with the individual mandate and to determine whether they may claim the premium tax credit on their individual income tax returns. An ALE must also annually report to the IRS certain identifying information about itself and its full-time employees, and information regarding the health care coverage, if any, that the ALE offers to its full-time employees during each month of the year. The employer shared responsibility rules and the reporting and disclosure rules apply to all ALEs, including tax-exempt entities, federal, state and government entities and Indian tribal governments.

An ALE will use Form 1095-C to satisfy both the employee disclosure requirement and some of the IRS reporting requirements of Code section 6056. An ALE will use Form 1094-C to transmit the 1095-C forms for its employees to the IRS and to satisfy the IRS reporting requirements not covered by the Form 1095-C. ALEs that file 250 or more 1095-C forms with the IRS during a year must file the forms electronically. The regulations permit, but do not require, the electronic furnishing of Form 1095-C to full-time employees if certain requirements are met. For information regarding electronic filings, see IRS Publication 5165, Guide for Electronically Filing Affordable Care Act (ACA) Information Returns.

Similar to the deadline for furnishing W-2 forms, the date by which an ALE must furnish 1095-C forms to its full-time employees for a calendar year is January 31 of the following year. ALEs must file the 1094-C transmittal form and the 1095-C forms for its full-time employees with the IRS no later than February 28 (March 31 if filed electronically) of the year immediately following the calendar year to which the return relates. If an employer provides health insurance to its employees under a self-funded plan, Code section 6055 requires that the employer provide a Form 1095-C to each primary insured individual, whether or not the insured is a full-time employee of the employer. If an ALE is subject to the reporting and disclosure rules under both Code section 6056 and Code section 6055, the Forms 1094-C and 1095-C that the ALE uses to satisfy the reporting and disclosure requirements under Code section 6056 must also include the information needed for a self-funded plan to satisfy the requirements of Code section 6055. Accordingly, the ALE must use a single Form 1095-C to satisfy the reporting and disclosure requirements of Code section 6055, if applicable, and Code section 6056 with respect to any individual full-time employee or family member.

Steps to Take Now
Although not every employee who receives a W-2 will also receive a Form 1095-C, every employee who must receive a Form1095-C must also receive a W-2. Consequently, the 1095-C and W-2 functions may be coordinated. If an ALE uses an outside vendor to handle its payroll and W-2 reporting requirements, the ALE will probably be able to use the same vendor to comply with the Form 1095-C requirements. The ALE might want to check with several vendors that process W-2 and 1095-C forms to do some comparison shopping.

ALEs that handle their payroll and W-2 reporting requirements in house should assess whether they have the systems capability to prepare and send 1095-C forms to all of their full-time employees and to transmit the forms to the IRS. If an ALE wants to keep Form 1095-C processing in house, the ALE should determine what data must be collected, identify where the required data is stored in its financial and information systems and develop systems to collect and aggregate the data, prepare and send the 1095-C forms to employees, and transmit the 1094-C and 1095-C forms to the IRS.

Penalties
Generally, for returns required to be filed with the IRS after December 31, 2015, the penalty for failing to file a correct information return will be $250 for each such failure, not to exceed $3,000,000 per year. Similarly, for statements required to be provided to employees after December 31, 2015, the penalty for failing to provide a correct statement to an employee will be, generally, $250 for each such failure, not to exceed $3,000,000 per year. In the worst case, an employer could incur a penalty of $500 for each instance of failing to file a Form 1095-C with the IRS and furnish the form to the affected employee or for providing incorrect information on a Form 1095-C that the employer does file with the IRS and furnish to an employee. The IRS has announced, however, that it will not impose penalties on ALEs with respect to Form 1094-C and Form 1095-C reports and statements for 2015 that are due in 2016 if the reporting entity can show that it has made a good faith effort to comply with the reporting requirements.

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