

WHAT YOU NEED TO KNOW



Compliance Recap

November 2017

November was a busy month in the employee benefits world. President Trump nominated Alex Azar for Secretary of the U.S. Department of Health and Human Services (HHS).

The Internal Revenue Service (IRS) updated its guidance on employer shared responsibility penalty assessments and released guidance on Qualified Small Employer Health Reimbursement Arrangement (QSE HRA) implementation and administration. The U.S. Department of Labor's Employee Benefits Security Administration (EBSA), the IRS, and the Pension Benefit Guaranty Corporation (PBGC) released advance informational copies of the 2017 Form 5500 annual return/report and related instructions.

The U.S. House Republicans introduced a tax reform bill called the "Tax Cuts and Jobs Act" that, if passed, would impact multiple aspects of the tax code. The DOL issued a final rule to delay the applicability date of its rule that amends claims procedure requirements of ERISA-covered employee benefit plans that provide disability benefits.

The DOL released guidance for group health plans impacted by Hurricane Maria and California wildfires. The DOL and IRS jointly announced deadline extensions for those affected by Hurricane Maria. The IRS provided additional guidance on leave-based donation programs' tax treatment.

UBA Updates

UBA released three new advisors in November:

- [Proposed 2019 Benefit Payment and Parameters Rule](#)
- [IRS Updates Guidance on Play-or-Pay Penalty Assessments](#)
- [Employee Benefit Plans and the House Republican Tax Reform Bill](#)

UBA updated existing guidance:

- [Qualified Small Employer Health Reimbursement Arrangements FAQ](#)
- [The Play-or-Pay Penalty and Counting Employees Under the ACA](#)

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IRS Updates Guidance on Play-or-Pay Penalty Assessments

To comply with the Patient Protection and Affordable Care Act (ACA), "large" employers must offer their full-time employees health coverage, or pay one of two employer shared responsibility / play-or-pay penalties. The IRS determines the penalty each calendar year after employees have filed their federal tax returns.

The IRS recently indicated on its ["Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act" webpage](#) that, in late 2017, it plans to issue [Letter 226J](#) to inform large employers of their potential liability for an employer shared responsibility payment for the 2015 calendar year.

[Read more about the IRS guidance.](#)

IRS Releases Guidance on QSE HRA Implementation

In December 2016, the [21st Century Cures Act](#) (Cures Act) became law. The Cures Act allows certain small employers to reimburse individual health coverage premiums up to a dollar limit through health reimbursement arrangements called "Qualified Small Employer Health Reimbursement Arrangements" (QSE HRAs). Although the provision went into effect on January 1, 2017, the IRS did not issue detailed guidance regarding QSE HRA implementation at that time.

On October 31, 2017, the IRS released [Notice 2017-67](#), providing guidance on the implementation and administration of QSE HRAs.

[Read more about the IRS' guidance.](#)

Advance Informational Copies of 2017 Form 5500 Annual Return/Report

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) released [advance informational copies of the 2017 Form 5500 annual return/report](#) and [related instructions](#).

Specifically, the instructions highlight the following modifications to the forms, schedules, and instructions:

- **IRS-Only Questions.** IRS-only questions that filers were not required to complete on the 2016 Form 5500 have been removed from the Form 5500 and Schedules.
- **Authorized Service Provider Signatures.** The instructions for authorized service provider signatures have been updated to reflect the ability for service providers to sign electronic filings on the plan sponsor and Direct Filing Entity (DFE) lines, where applicable, in addition to signing on behalf of plan administrators on the plan administrator line.
- **Administrative Penalties.** The instructions have been updated to reflect that the new maximum penalty for a plan administrator who fails or refuses to file a complete or accurate Form 5500 report has been increased to up to \$2,097 a day for penalties assessed after January 13, 2017, whose associated violations occurred after November 2, 2015. Because the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 requires the penalty amount to be adjusted annually after the Form 5500 and its schedules, attachments, and instructions are published for filing, be sure to check for any possible required inflation adjustments of the

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maximum penalty amount that may have been published in the Federal Register after the instructions have been posted.

- **Form 5500-Plan Name Change.** Line 4 of the Form 5500 has been changed to provide a field for filers to indicate that the name of the plan has changed. The instructions for line 4 have been updated to reflect the change. The instructions for line 1a have also been updated to advise filers that if the plan changed its name from the prior year filing or filings, complete line 4 to indicate that the plan was previously identified by a different name.
- **Filing Exemption for Small Plans.** The instructions indicate that for a small unfunded, insured, or combination welfare plan to qualify for the filing exemption, the plan must not be subject to the Form M-1 filing requirements.

Be aware that the advance copies of the 2017 Form 5500 are for informational purposes only and cannot be used to file a 2017 Form 5500 annual return/report.

The U.S. House Introduces Tax Reform Bill

The U.S. House Republicans introduced a tax reform bill ([H.R.1](#)-115th Congress) called the “Tax Cuts and Jobs Act” that, if passed, would impact multiple aspects of the tax code. Many of these changes relate to employee benefit plans, particularly in relation to certain fringe benefits.

[Read more about the House bill.](#)

DOL Delays Disability Claims Procedure Regulations’ Applicability Date

The U.S. Department of Labor (DOL) issued a [final rule](#) to delay the applicability date of its [rule](#) that amends the claims procedure requirements of ERISA-covered employee benefit plans that provide disability benefits. The DOL is delaying the applicability date from January 1, 2018, to April 1, 2018. The DOL’s [Fact Sheet](#) contains a summary of the regulation’s requirements.

DOL Provides Guidance for Group Health Plans Impacted by Hurricane Maria and California Wildfires

The DOL issued a [news release](#) to recognize that plan participants and beneficiaries may encounter problems due to Hurricane Maria and the California Wildfires. The DOL advises plan fiduciaries to make reasonable accommodations to prevent workers’ loss of benefits and to take steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established time frames.

The DOL also acknowledged that there may be instances when full and timely compliance by group health plans may not be possible due to physical disruption to a plan’s principal place of business. The DOL’s enforcement approach will emphasize compliance assistance, including grace periods and other relief where appropriate.

DOL and IRS Provides Deadline Extensions for Those Affected by Hurricane Maria

The DOL and IRS [announced](#) deadline extensions to provide plan participants, beneficiaries, and employers affected by Hurricane Maria with additional time to make health coverage and benefits decisions.

Under the extension, group health plans have additional time to comply with certain deadlines affecting COBRA continuation coverage, Health Insurance Portability and Accountability Act of 1996 (HIPAA)

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special enrollment, claims for benefits, appeals of denied claims, and external review of certain claims. Under the extension, participants and beneficiaries have additional time to make claims for benefits and appeal denied claims.

IRS Provides Additional Guidance on Leave-Based Donation Programs' Tax Treatment

In recent months, the IRS provided guidance for employers who adopt leave-based donation programs to provide charitable relief for victims of Hurricane and Tropical Storms Irma and Maria. This month, the IRS issued [Notice 2017-70](#) which extends the guidance to employers' programs adopted for the relief of victims of the California wildfires.

These leave-based donation programs allow employees to forgo vacation, sick, or personal leave in exchange for cash payments that the employer will make to charitable organizations described under Internal Revenue Code Section 170(c).

The employer's cash payments will not constitute gross income or wages of the employees if paid before January 1, 2019, to the Section 170(c) charitable organizations for the relief of victims of the California wildfires. Employers do not need to include these payments in Box 1, 3, or 5 of an employee's Form W-2.

Question of the Month

Q. Under the ACA, what employers must report information on Form W-2 and what information must be reported?

A. The ACA requires employers to report the cost of coverage under an employer-sponsored group health plan. Reporting the cost of health care coverage on Form W-2 does not mean that the coverage is taxable.

Employers that provide "applicable employer-sponsored coverage" under a group health plan are subject to the reporting requirement. This includes businesses, tax-exempt organizations, and federal, state and local government entities (except with respect to plans maintained primarily for members of the military and their families). Federally recognized Indian tribal governments are not subject to this requirement.

Employers that are subject to this requirement should report the value of the health care coverage in Box 12 of [Form W-2](#), with Code DD to identify the amount. There is no reporting on Form W-3 of the total of these amounts for all the employer's employees.

In general, the amount reported should include both the portion paid by the employer and the portion paid by the employee. See the chart below from the IRS' [webpage](#) and its [questions and answers](#) for more information.

The chart below illustrates the types of coverage that employers must report on Form W-2. Certain items are listed as "optional" based on transition relief provided by [Notice 2012-9](#) (restating and clarifying [Notice 2011-28](#)). Future guidance may revise reporting requirements but will not be applicable until the tax year beginning at least six months after the date of issuance of such guidance.

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Form W-2 Reporting of Employer-Sponsored Health Coverage

Coverage Type	Form W-2, Box 12, Code DD		
	Report	Do Not Report	Optional
Major medical	X		
Dental or vision plan not integrated into another medical or health plan			X
Dental or vision plan which gives the choice of declining or electing and paying an additional premium			X
Health flexible spending arrangement (FSA) funded solely by salary-reduction amounts		X	
Health FSA value for the plan year in excess of employee's cafeteria plan salary reductions for all qualified benefits	X		
Health reimbursement arrangement (HRA) contributions			X
Health savings account (HSA) contributions (employer or employee)		X	
Archer Medical Savings Account (Archer MSA) contributions (employer or employee)		X	
Hospital indemnity or specified illness (insured or self-funded), paid on after-tax basis		X	
Hospital indemnity or specified illness (insured or self-funded), paid through salary reduction (pre-tax) or by employer	X		
Employee assistance plan (EAP) providing applicable employer-sponsored healthcare coverage	Required if employer charges a COBRA premium		Optional if employer does not charge a COBRA premium
On-site medical clinics providing applicable employer-sponsored healthcare coverage	Required if employer charges a COBRA premium		Optional if employer does not charge a COBRA premium
Wellness programs providing applicable employer-sponsored healthcare coverage	Required if employer charges a COBRA premium		Optional if employer does not charge a COBRA premium
Multi-employer plans			X
Domestic partner coverage included in gross income	X		

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Coverage Type	Form W-2, Box 12, Code DD		
	Report	Do Not Report	Optional
Governmental plans providing coverage primarily for members of the military and their families		X	
Federally recognized Indian tribal government plans and plans of tribally chartered corporations wholly owned by a federally recognized Indian tribal government		X	
Self-funded plans not subject to federal COBRA			X
Accident or disability income		X	
Long-term care		X	
Liability insurance		X	
Supplemental liability insurance		X	
Workers' compensation		X	
Automobile medical payment insurance		X	
Credit-only insurance		X	
Excess reimbursement to highly compensated individual, included in gross income		X	
Payment/reimbursement of health insurance premiums for 2% shareholder-employee, included in gross income		X	
Other Situations			
Employers required to file fewer than 250 Forms W-2 for the preceding calendar year (determined without application of any entity aggregation rules for related employers)			X
Forms W-2 furnished to employees who terminate before the end of a calendar year and request, in writing, a Form W-2 before the end of that year			X
Forms W-2 provided by third-party sick-pay provider to employees of other employers			X

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