

Employers (Including Municipalities) Still Required to File IRS Forms Despite Changes to Affordable Care Act Individual Mandate



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If you watch the news, you may have heard that the requirement known as the “individual mandate” under the Affordable Care Act, which generally requires that individuals either obtain health insurance or pay a penalty, was repealed by the Tax Cuts and Jobs Act of 2017. Although the “Individual Mandate Repealed” headline is basically true for all practical purposes, it is not the whole story. The truth is that the 2017 Tax Act did not actually repeal the individual mandate; instead, it eliminated the penalty individuals must pay for not having health insurance. Thus, effective for 2019 forward, individuals are still required under the law to have health insurance, but will not be subject to any penalty for not complying with the law.

If you are an employer with more than 50 full-time employees, this technicality is important. Although the change in the law eliminated the individual mandate penalty, it had no effect on a large employer’s obligation to offer minimum essential health coverage to its employees (known as the “employer mandate”), or on an employer’s reporting obligations to the IRS and its employees regarding its offer of health coverage. Accordingly, large employers are still obligated to provide Forms 1095-C to their employees and the IRS, even though the forms will have little or no practical effect for employees. Further, employers who fail to provide the proper forms to their employees and file copies with the IRS may be subject to stiff penalties.

The Affordable Care Act requires employers with an average of 50 or more full-time employees (known as an “applicable large employer” or “ALE”) to provide a Form 1095-C to each of its full-time employees reporting whether or not the employee was offered minimum essential health coverage during the year. The employer must also file a copy of each employee’s Form 1095-C and a transmittal Form 1094-C with the IRS. The employee then typically attaches the Form 1095-C to his or her individual income tax return to establish he or she is in compliance with the individual mandate.

With the elimination of the individual mandate penalty by the Tax Cut and Jobs Act beginning in 2019, many tax experts speculated whether the IRS would also do away with the 1095-C filing requirement for 2019 and future years, since the forms are now practically unnecessary. However, the IRS published guidance in December 2019 confirming that employers are still required to file the forms, and that employers that fail to do so are still subject to penalties. For 2019, IRS extended the due date to provide Forms 1095-C to employees from January 31st to March 31st, 2020. The due date for filing the forms with the IRS is February 28th, 2020, if filing paper forms, or March 31st, 2020, if filing electronically.

Employers may be subject to penalties of up to \$270 per return for failure to timely provide Forms 1095-C to employees, and an additional \$270 per return for failure to timely file the forms with the IRS. Special rules apply that could increase this penalty if an employer intentionally disregards the filing requirements.

Employers who fail to timely file the Forms 1095-C may eventually receive a notice from the IRS proposing to assess a penalty based on the number of late or unfiled returns. This notice should provide instructions for the employer to request a waiver of such penalties if the employer can establish to the IRS's satisfaction that the failure to timely file was due to reasonable cause and not due to willful neglect.

Whether such relief is available depends on a number of factors set forth in the IRS regulations. In order to request a waiver of penalties, employers must typically respond within forty five (45) days of receiving the proposed penalty notice. Thus, it is important that employers take any IRS notice regarding failure to file penalties seriously, and seek the assistance of an experienced tax advisor in responding to the notice and requesting a waiver.

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