

CLIENT - ALERT



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TO: Clients and Contacts

FROM: D. Brent Wills, Esq.

RE: ***Affordable Care Act Update*** – Reporting deadlines delayed

DATE: January 25, 2016

This Memorandum provides an update for employers regarding IRS Notice 2016-4, recently published by the Internal Revenue Service (the “IRS”), that delayed certain employer reporting obligations under the Affordable Care Act (the “ACA,” or the “Act”).

Background

The ACA enacted Section 4980H of the Internal Revenue Code (the “Code”), sometimes referred to as the “employer mandate,” the “employer shared responsibility” rule, the “employer pay or play” mandate, and other names. As most employers are aware, Section 4980H requires that “applicable large employers” (in general, employers that have 50 or more employees) offer health insurance coverage to their full-time employees, and to certain dependents of such employees, or pay a penalty.

The ACA also enacted Sections 6055 and 6066 of the Code that require applicable large employers (referred to as “employers” hereinafter) and health insurance carriers to report certain information to the IRS to facilitate enforcement of Section 4980H. In the case of employers, Section 6056 specifically requires that, each year beginning in 2016, they must (i) prepare and deliver IRS Form 1095-C to their full-time employees; and (ii) prepare and deliver Form 1094-C to the IRS. Reporting on both forms is based on the calendar year.

IRS Notice 2016-4

In general, IRS regulations require that employers deliver Form 1095-C to their full-time employees not later than January 31 in the calendar year following the calendar year to which the form pertains and deliver Form 1094-C to the IRS not later than March 31.¹ Recently, however, the IRS published Notice 2016-4 (the “Notice”) that delays these reporting requirements. Specifically, employers now must prepare and deliver Form 1095-C to their full-time employees ***not later than March 31, 2016*** and prepare

¹ Specifically, Form 1094-C must be filed with the IRS not later than March 31, if the employer files electronically. Employers that do not file electronically must file Form 1094-C with the IRS not later than the last day in February. If an employer has 250 or more full-time employees, however, the employer must file electronically.

and file Form 1094-C with the IRS ***not later than June 30, 2016.***² The relief provided under the Notice pertains to this year only (that is, reporting in respect to calendar year 2015); it does not modify reporting obligations in later years.

Conclusion

Notwithstanding the Notice, employers should continue to move forward diligently to timely prepare and deliver Form 1095-C to their full-time employees and to timely prepare and file Form 1094-C with the IRS. Preparing both forms may entail extensive coordination between and among numerous segments or departments within an employer's workforce (payroll, HR, accounting and finance, management, etc.). Many employers may also need to coordinate with outside vendors, such as a third-party payroll service or outside financial and legal advisers. Many employers are also attempting to implement software solutions designed to facilitate reporting, avoid or minimize Section 4980H penalties, and other ACA compliance. Although many vendors undoubtedly have diligently tested their products, none have been tested "live," and there are bound to be "glitches" in most or all systems, not to mention extensive coordination, again, between employers and their vendors. For these and many other reasons, even though the Notice provides employers with much needed breathing room for meeting the ACA reporting requirements, many employers are likely to need every one of the additional 60 days (for Form 1095-C reporting) and 90 days (for Form 1094-C reporting) to timely comply.

If you are an employer with questions or in need of guidance in respect to the ACA reporting requirements discussed in this Memorandum, please feel free to contact me at (334) 409-2211 or bwills@gilpingivhan.com.

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² Specifically, Form 1094-C must be filed with the IRS not later than June 30, 2016 if the employer files electronically. Employers that do not file electronically must file Form 1094-C with the IRS not later than May 31, 2016.