

WHAT YOU NEED TO KNOW



## Compliance Recap

December 2017

December was a relatively busy month in the employee benefits world.

The Internal Revenue Service (IRS) delayed the reporting deadlines in 2018 for the 1095-B and 1095-C forms to individuals. President Trump signed the Tax Cuts and Jobs Act. The Centers for Medicare and Medicaid Services (CMS) released guidance on accommodation revocation notices.

A U.S. District Court vacated U.S. Equal Employment Opportunity Commission (EEOC) wellness rules effective January 1, 2019. The U.S. Department of Health and Human Services' Office of Child Support Enforcement (OCSE) issued Frequently Asked Questions to address employers' duties regarding medical support notices.

The IRS released Form 8941 instructions regarding credit for small employer health insurance premiums and Form W-2 reporting guidance for Qualified Small Employer Health Reimbursement Arrangements (QSEHRAs).

### UBA Updates

UBA updated existing guidance: [Contraception Mandate Rolled Back for Employers](#)

### IRS Extends 2018 Deadlines for 1095-B and 1095-C Forms to Individuals

On December 22, 2017, the Internal Revenue Service (IRS) issued [Notice 2018-06](#), delaying the reporting deadlines in 2018 for the 1095-B and 1095-C forms to individuals. The 1095-B form is now due to the individual identified as the "responsible individual" on the form by March 2, 2018. The 1095-C form is now due to employees by March 2, 2018.

There is no delay for the 1094-C and 1094-B forms, or for forms due to the IRS.

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

### President Trump Signs Tax Bill

On December 22, 2017, President Trump signed the [Tax Cuts and Jobs Act](#) (Act) that, among other items, eliminates the individual mandate penalty under the Patient Protection and Affordable Care Act

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(ACA). The Act reduces the penalty associated with the individual shared responsibility provision to zero, effective in 2019.

Per the Congressional Research Service's [summary](#), the bill amends the Internal Revenue Code to reduce tax rates and modify policies, credits, and deductions for individuals and businesses.

For businesses, the bill:

- Reduces the corporate tax rate from a maximum of 35 percent to a flat 20 percent rate (25 percent for personal services corporations).
- Allows increased expensing of the costs of certain property.
- Limits the deductibility of net interest expenses to 30 percent of the business's adjusted taxable income.
- Repeals the work opportunity tax credit.
- Terminates the exclusion for interest on private activity bonds.
- Modifies or repeals various energy-related deductions and credits.
- Modifies the taxation of foreign income.
- Imposes an excise tax on certain payments from domestic corporations to related foreign corporations.

The bill also repeals or modifies several additional credits and deductions for individuals and businesses.

In particular, the Act eliminates the business deduction for qualified mass transit and parking benefits starting in 2018, and eliminates the exclusion for bicycle commuting expenses for tax years 2018 through 2025. These benefits (except for bicycle commuting) will continue to be tax-exempt to employees. For 2018, employees can contribute up to a maximum of \$260 per month for both qualified mass transit and parking expenses through an employer-sponsored qualified transportation plan under [Section 132\(f\)](#).

The Act's elimination of the business deduction for qualified mass transit and parking benefits means that employers will be taxed on the value of providing qualified transportation fringe benefits.

## **CMS Releases Guidance on Accommodation Revocation Notices**

The Patient Protection and Affordable Care Act (ACA) requires that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide coverage of certain specified preventive services without cost sharing. Under the ACA and interim final regulations, objecting entities could use an accommodation process as part of the exemption from the ACA's requirement to provide contraceptive coverage.

If an entity wants to revoke the accommodation, then the regulations require that written notification be given to participants and beneficiaries. The Centers for Medicare and Medicaid Services (CMS) released guidance on the two methods that can be used to provide accommodation revocation notices.

[Read more about CMS' guidance.](#)

## **U.S. District Court Vacates EEOC Wellness Rules Effective January 1, 2019**

On August 22, 2017, the United States District Court for the District of Columbia [held](#) that the U.S. Equal Employment Opportunity Commission (EEOC) failed to provide a reasoned explanation for its decision to

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adopt 30 percent incentive levels for employer-sponsored wellness programs under both the Americans with Disabilities Act (ADA) rules and Genetic Information Nondiscrimination Act (GINA) rules.

At that time, the court declined to vacate the EEOC's rules because of the significant disruptive effect it would have. However, the court remanded the rules to the EEOC for reconsideration.

In September 2017, the EEOC filed a status report indicating its schedule to comply with the court order, including issuing a proposed rule by August 2018 and a final rule by October 2019. It stated that it did not expect to require employers to comply with a new rule before 2021.

The court found the EEOC's process of not generating applicable rules until 2021 to be unacceptable. Instead, the court determined that one year was ample time for employers to adjust to new EEOC rules. The court [vacated](#) the EEOC rule effective January 1, 2019, and ordered the EEOC to promulgate any new proposed rules by August 31, 2018.

### OCSE Issues FAQs Regarding Employers' Duties Regarding Medical Support Notices

The U.S Department of Health and Human Services' Office of Child Support Enforcement (OCSE) issued its "[Medical Support – Answers to Employers' Questions](#)" FAQs, which instruct employers and plan administrators how to complete Parts A and B of the National Medical Support Notice (NMSN). The FAQs also provide, among other items, the following guidance:

- When a plan receives a request for information by a child support agency that issued an NMSN, the plan administrator is permitted to disclose protected health information in response to the NMSN under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- Even if a recently terminated employee has elected self-only COBRA continuation coverage, a plan should enforce the NMSN to cover the child of that former employee. If the plan is subject to COBRA and if the child loses coverage due to a qualifying event, then the child is a qualified beneficiary with the right to elect COBRA continuation coverage.
- A plan administrator may take all necessary steps to enroll the child named in the NMSN if coverage is available and the premiums can be deducted with the limits of the [Consumer Credit Protection Act](#) (CCPA). Such steps may include changing an employee's coverage to a different option, even if it affects the employee's premiums.

### IRS Releases Form 8941 Instructions: Credit for Small Employer Health Insurance Premiums

The Internal Revenue Service (IRS) released its [instructions](#) for [Form 8941](#) which eligible small employers use to figure the credit for health insurance premiums for tax years beginning after 2009. For tax years beginning after 2013, the credit is only available for period of two consecutive tax years. Generally, the maximum credit is a percentage of premiums that the employer has paid during the tax year for health insurance coverage that the employer provided to certain employees enrolled in a qualified health plan offered through the Small Business Health Options Program (SHOP) Marketplace.

### IRS Releases Form W-2 Reporting Guidance for QSEHRAs

The IRS released its [Form 8962](#) with [instructions](#). Form 8962 is used by individual taxpayers to calculate and report a premium tax credit. The instructions provide a reminder to employers who provided a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) to their eligible employees. For each employee covered under its QSEHRA, the employer should report the annual permitted benefit by indicating Code FF in Box 12 of the employee's Form W-2.

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## Question of the Month

**Q.** What code should an employer use for Form 1095-C Line 14 if:

- the employer offers minimum essential coverage (MEC) providing minimum value (MV) to a full-time employee that is affordable (using the Federal Poverty Level safe harbor for affordability) and
- the employer offers at least MEC to the employee's spouse and dependents?

Does the code change if the employee declines coverage because the employee is covered by the spouse's group health plan?

**A.** The employer should use Code 1A in Line 14. The code doesn't change if the employee waives coverage.

1/9/2018

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