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Year-End Watch List: Possible Simplification to Employer Group Health Plan Reporting

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2024 might almost be over, but the Senate recently passed two bills that are intended to ease at least some employer burdens under the Patient Protection and Affordable Care Act (ACA) moving forward. The bills, both of which are pending signature by President Biden, are:

1. The Paperwork Burden Reduction Act (H.R. 3797)
2. The Employer Reporting Improvement Act (H.R. 3801)

Should these laws be enacted, they would together simplify ACA compliance in numerous ways, including the following:

1. Reduced Burden for Annual Participant Notifications

We are realists. Employees may or may not read the mandatory notices employers provide each year. In particular, the current Forms 1095-C that are transmitted to employees every January are just the type of non-plain-English group health plan disclosures that employers begrudgingly prepare and circulate annually. Under the Paperwork Burden Reduction Act, employers subject to the requirement would no longer need to automatically distribute

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Forms 1095-C to employees, but instead would only have to prepare them and then wait to distribute them to employees who affirmatively request them. To take advantage of this reduction in administrative burdens, employers must give employees "clear, conspicuous, and accessible notice" of their ability to request the forms (the IRS will provide guidance), and must fulfill employee requests by the later of (1) thirty days from the date of the request or (2) January 31 of the year following the calendar year to which the return pertains.

To be clear, employers must still *create* the Forms 1095-C; this change would just simplify matters by allowing employers to no longer distribute them to employees, except on request. Any interested employers should plan now for appropriate January messaging.

2. Extended Timeframe to Respond to IRS Notices

When the IRS believes an applicable large employer has failed to provide qualifying affordable coverage under the ACA, the employer receives an IRS Letter 226-J, proposing an assessment. Currently, employers only have thirty days to respond to the Letter 226-J, but the Employer Reporting Improvement Act would relax that timeline, instead requiring the IRS to provide employers *at least* ninety days to respond. This additional response timeframe would be a welcome change for applicable large employers with complex internal mail delivery arrangements, not to mention employers that might require time to secure tax or benefits counsel in response to a notice.

Affected recipient employers of these IRS letters should enjoy the lengthier timelines without affirmative action on their part. Appropriate mitigation of ACA assessments remains prudent.

3. New Statute of Limitations on ACA Penalties

How many years may the IRS go back in deciding whether an employer failed to submit required ACA filings or participant notices? The current answer is "forever" (though practically speaking it does not matter for years before the ACA's enactment). But under the Employer Reporting Improvement Act, the IRS would become limited in seeking assessments to "just" six years from an ACA return's due date (or actual filing date, if later). Again, affected employers should enjoy the capped penalties without affirmation action on their part. Appropriate mitigation of notification-driven assessments remains prudent.

As of this update's publication, both laws are still pending President Biden's signature. But industry experts expect President Biden will execute both laws, providing employers that sponsor group health plans with much-needed relief moving forward. Akerman's Employee Benefits and Executive Compensation team suggests watching this area in the last weeks of the Biden administration.
