



NAVIGATING HEALTHCARE REFORM

November 2016

ACA In The News: ACA After the Election and DOL Overtime Rules Stalled

OVERVIEW

On November 8, 2016, Republican candidate Donald Trump was elected the 45th President of the United States. Trump's victory in the election, along with Republican majorities retained in both the Senate and House of Representatives, will likely have a significant impact on a number of compliance areas over the next four years.

During his campaign, Trump called for a repeal of President Barack Obama's hallmark health care reform legislation, the Affordable Care Act (ACA). In addition, Trump's victory raises uncertainty over the future of other policies enacted under President Obama, including the new overtime requirements under the Fair Labor Standards Act (FLSA).

On November 18, 2016 the Internal Revenue Service (IRS) issued Notice 2016-70 to extend the due date for furnishing forms under Sections 6055 and 6056 for 2016 for 30 days, from January 31, 2017, to March 2, 2017.

REPORTING DUE DATE EXTENDED

Sections 6055 and 6056 were added to the Internal Revenue Code by the ACA.

- **Section 6055** applies to providers of minimum essential coverage (MEC), such as health insurance issuers and employers with self-insured health plans. These entities will generally use Forms 1094-B and 1095-B to report information about the coverage they provided during the previous year.
- **Section 6056** applies to applicable large employers (ALEs)—generally, those employers with 50 or more full-time employees, including full-time equivalents, in the previous year. ALEs will use Forms 1094-C and 1095-C to report information relating to the health coverage that they offer (or do not offer) to their full-time employees.

On November 18, 2016 the IRS issued Notice 2016-70 to extend the due date for furnishing forms under Sections 6055 and 6056 for 2016 for 30 days, from January 31, 2017, to March 2, 2017; and extend good-faith transition relief from penalties related to 2016 information reporting under Sections 6055 and 6056. Notice 2016-70 does not extend the due date for filing forms with the IRS for 2016. The due date for filing with the IRS under Sections 6055 and 6056 remains February 28, 2017 (March 31, 2017, if filing electronically).

Despite the delay, employers and other coverage providers are encouraged to furnish 2016 statements to individuals as soon as they are able.

Filers are not required to submit any request or other documentation to the IRS to take advantage of the extended furnishing due date provided by Notice 2016-70. Because this extended furnishing deadline applies automatically to all reporting entities, the IRS will not grant additional extensions of time of up to 30 days to furnish Forms 1095-B and 1095-C.

IMPACT ON INDIVIDUALS

Some individual taxpayers may not receive a Form 1095-B or Form 1095-C by the time they are ready to file their 2016 tax returns. Taxpayers may rely on other information received from their employer or other coverage provider for purposes of filing their returns, including determining eligibility for an Exchange subsidy and confirming that they had MEC for purposes of the individual mandate.

Taxpayers do not need to wait to receive Forms 1095-B and 1095-C before filing their returns. In addition, individuals do not need to send the information they relied upon to the IRS when filing their returns, but should keep it with their tax records.

THE FUTURE OF THE AFFORDABLE CARE ACT

Throughout his presidential campaign, Trump ran on a platform of repealing and replacing the ACA. In addition, since its enactment, Republicans in both the Senate and the House of Representatives have opposed virtually all the ACA, calling for its repeal. Due to the sweeping Republican victories seen in this election, it is likely that some changes will be made to the ACA over the next four years. While it is largely unclear, at this time, what those changes will look like, Republicans in the past have suggested the following:

- Full repeal of the ACA, with or without a potential replacement health care reform legislation;
- Partial repeal of key provisions (such as the individual and employer mandates), while retaining some less controversial provisions;
- Changes to the Medicare and Medicaid programs; and
- Implementing new policies intended to expand coverage and lower health care costs.

However, the newly elected officials will not take office until early 2017. This means that there will likely be no significant legislative or regulatory changes to the ACA before then. Due to the additional uncertainty for employers, employers may want to hold off on making any large-scale changes related to their employer-provided health care.

Regardless of any future changes that may be made, employers that provide group health coverage for their employees must prepare for upcoming ACA deadlines. These may include:

- **Employer Shared Responsibility Rules** - *The ACA requires ALEs to offer affordable, minimum value health coverage to their full-time employees. Penalties can apply for each month in which an ALE does not offer this required coverage.*
- **Employer Reporting of Coverage** - *Employers must report information under Sections 6055 and 6056 to the IRS and to certain individuals about the coverage they offer or provide during the year.*
- **Changes to ACA Limits for 2017** - *Several dollar limits are adjusted each year, and employer-sponsored plans should be updated to reflect those adjusted limits. For example, the out-of-pocket maximum increased to \$7,150 for self-only coverage and \$14,300 for family coverage for the 2017 plan year.*
- **Summary of Benefits and Coverage (SBC)** - *Health plans and issuers must provide an SBC to participants and beneficiaries that includes information about health plan benefits and coverage in plain language. The Departments issued a new SBC template and related materials to be used for health plans with open enrollment periods or plan years beginning on or after April 1, 2017.*

ADDITIONAL COMPLIANCE AREAS

The 2016 election results also raised questions over other compliance requirements that are set to take effect later in 2016 such as the anti-retaliation rules issued by the Occupational Safety and Health Administration (OSHA) and new overtime wage payment rules. On November 22, 2016, a federal judge in Texas issued a preliminary injunction, halting the enforcement of the Department of Labor's (DOL) new overtime rule until further notice. The rule, which was set to take effect on December 1, 2016, would have increased the salary threshold for the "white collar overtime exemptions" to \$47,476 per year.

The judge's ruling gives employers across the country a reprieve from having to raise salaries for exempt employees to the new threshold or pay them overtime. However, an appeal of the ruling is possible. The DOL said in a statement that it was reviewing the court's order and considering any next steps.

We will continue to monitor whether there will be any changes to these rules or their implementation dates due to this litigation or the upcoming change in administration.



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