



# MILLENNIUM UPDATE

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As we shared in last month's Millennium Update, ERISA attorney Larry Grudzien recently hosted a live webinar to discuss the new W-2 reporting requirements for employer-sponsored coverage. For your convenience, the core information is summarized below. *(Instructions for accessing the full, archived version of the webinar can be found at the end of this message.)*

## KEY POINTS

- Employers must report the "aggregate cost" of "applicable employer-sponsored coverage" on an employee's Form W-2.
- Cost of coverage listed on W-2 is not taxable to employees.
- Although PPACA provided that the requirement would be effective beginning with the 2011 tax year, the IRS subsequently made compliance in 2011 optional (this is part of "transition relief").
- To comply with this requirement, employers must:
  - Determine the applicable employer-sponsored coverage that is provided to each employee;
  - Calculate the aggregate cost of such coverage for each employee; and
  - Report that cost on each employee's Form W-2.

## WHEN DO THE NEW REGULATIONS TAKE EFFECT?

- The Form W-2 reporting requirement is first required for the 2012 tax year—that is, the value must be reported on the Form W-2 issued in January 2013 for the 2012 tax year.
- Under "transition relief" provided in IRS Notice 2011-28, certain reporting requirements are optional for 2012.
- Regulations will tighten up starting with the 2013 tax year (for reporting on W-2 forms distributed in January 2014).
- Transition relief is currently available for:
  - Employers filing fewer than 250 Forms W-2;
  - Certain Forms W-2 furnished to terminated employees before the end of the year;

- Relief with respect to multiemployer plans;
- HRAs;
- Certain dental and vision plans; and
- Self-insured plans of employers not subject to COBRA continuation coverage or similar requirements.

## WHO IS SUBJECT TO THE REPORTING REQUIREMENTS?

- All employers that provide "applicable employer-sponsored coverage" during a calendar year are subject to the reporting requirement.
- Under transition relief (until further notice), an employer is not subject to the reporting requirement for any calendar year if the employer was required to file fewer than 250 Forms W-2 for the preceding calendar year.
  - If an employer files fewer than 250 Forms W-2 in 2011, the employer would not be subject to the reporting requirement for the 2012 calendar year.

## WHAT COVERAGES ARE APPLICABLE?

- Any employer-provided group health plan coverage (fully insured or self-insured) that is excludable from the employee's gross income under Code §106, or that would be excludable if it were paid for by the employer.
  - There are numerous exceptions, including (but not limited to) long-term care, dental insurance, and vision insurance.
- Generally, any coverage subject to the COBRA regulations' definition of "Group Health Plan" would, in the absence of an exception or transition rule, be subject to the W-2 reporting requirement

## WHAT MUST BE REPORTED?

- Employers must report the "aggregate reportable cost" of employer sponsored coverage for each employee.
  - Aggregate cost = EE cost + ER cost (or the COBRA rate)
- This is intended to capture the total cost of the coverage provided by the employer.
  - As such, it would appear that in cases where coverage is extended retroactively, W-2 reporting must still be made; however this has yet to be confirmed or clarified by the IRS.

## HOW IS AGGREGATE COST CALCULATED?

- Aggregate cost is determined under "rules similar to" the COBRA rules for applicable employer-sponsored coverage (including employee and employer contributions), including the special rules governing self-insured plans.
- Employers are permitted to calculate reportable cost (i.e., the cost of coverage under a group health plan) using one of three methods:
  - The COBRA applicable premium method;
  - The premium charged method (for insured plans); or
  - The modified COBRA premium method (for an employer that subsidizes the cost of coverage or determines the cost of coverage for a year by applying the cost of coverage in a prior year).

## OTHER CONSIDERATIONS:

- **Employer Must Reflect Any Changes in Reportable Cost During the Year.**
  - If the cost for a period changes during the year (e.g., under the COBRA applicable premium method because the 12-month period for determining the COBRA applicable premium is not the calendar year), the reportable cost under the plan for an employee for the year must reflect the increase or decrease.
- **Employers Must Account for Any Changes in an Employee's Coverage During the Year.**
  - If an employee changes coverage during the year, the reportable cost must take into account the change in coverage by reflecting the different reportable costs for the coverage elected by the employee for different periods.

## EMPLOYER ACTION PLAN:

- **Employers should add the following new items to their Form W-2 action plan:**
  - Determine whether stand-alone dental and vision benefits meet the HIPAA definition of "excepted benefits."
  - Evaluate whether EAP, wellness programs, and onsite clinics are "group health plans" for purposes of COBRA, and if so, how the reportable cost will be determined.
  - Choose a consistent method for allocating the cost of coverage when a benefit program includes both

medical and nonmedical benefits, and for allocating the cost of coverage for reporting periods that straddle two reporting years.

- As always, coordinate with payroll staff and vendors to ensure proper reporting on the Form W-2.
- Communicate with employees regarding the new information they'll see reported on their Form W-2.

## GET MORE INFORMATION ON W-2 REPORTING REQUIREMENTS

To view the recorded version of the webinar, visit Larry Grudzien's website:

[http://larrygrudzien.com/benefits\\_attorney/free-webinar-form-w-2-reporting-cost-of-employer-sponsored-health-coverage/](http://larrygrudzien.com/benefits_attorney/free-webinar-form-w-2-reporting-cost-of-employer-sponsored-health-coverage/)

To review the official W-2 reporting guidelines in their entirety, visit <http://www.irs.gov/pub/irs-drop/n-12-09.pdf>

As always, we will continue to investigate and communicate these and other regulatory changes that impact you, your employees, and the market as a whole.

**Best Regards,**

Keith Tallmadge and The Team  
at Millennium Benefits Consulting