



Year End Compliance Review

What's in your Open Enrollment Tool Kit?

November 28, 2018



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Minimum Health Plan Deductibles for 2018:
\$1,350 Single | \$2,700 Family

Compliance Buzz

Tax Reform and Tax Advantaged Benefits

12/20/2017 | After months of debate on tax reform, Congress passed the "Tax Cuts and Jobs Act" (H.R. 1) to overhaul the tax code. Items of interest for tax-advantaged benefits include the dependent care flexible spending account, adoption assistance, education assistance programs, transportation plans, and the individual mandate under the ACA.

With implementation starting in January, the impact of "Tax Cuts and Jobs Act" would be felt all throughout early 2018. Tax reform legislation removes the ACA's individual mandate requirement for months beginning after 12/31/18 and onward. [Read more >](#)



Download our Enrollment Toolkit

Employers | Promote your plan and save! Our toolkit makes it easy to increase FSA enrollment by reminding your employees about the value of using an FSA. Posters,



View Our Webinars

Compliance Expertise | Brokers and employers are welcome to register for January's webinar sessions, where we will provide an introduction to Health Savings



Health Benefits 101

News Center | HMO, PPO, POS, FSA, HRA, HSA. What, now? Learn about the basics of health benefits with our ongoing educational series. [Learn more >](#)



What are Documentation Requests?

Benefits Card | Did you use your Benefits Card with your BESTflex Plan Health Care FSA, and then receive a Documentation

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2018 Webinar Schedule



Introduction to Health Savings Accounts (HSA)

January

See Singer, ACFIL, CAS, 80 minutes

By attending this webinar, you'll learn:

- What is a Health Savings Account (HSA)?
- Who is eligible for an HSA?
- Who can make HSA contributions?
- What are the HSA contribution limits?
- What expenses are reimbursable under the HSA?
- What reporting is required for the HSA and who is responsible?

Audience: All clients, brokers

Thank you for attending!

Advanced HSA Concepts

February

See Singer, ACFIL, CAS, 80 minutes

By attending this webinar, you'll learn:

- How does the employer make contributions to an HSA?
- What is the impact to HSA when an individual is not covered by the HDHP all year?

Audience: Not yet available

Compliance Services

Boot Camp Videos

Permitted Election Changes

Part 1 - Change in Status Events (45:53)

Learn about when a participant can make a change in their election. [Download](#) [Slide Handout](#)

Part 2 - Cost and Coverage Events (47:25)

Learn about cost and coverage events and other miscellaneous election change events. [Download](#) [Slide Handout](#)

Part 3 - Leaves of Absence (1:00:27)

Learn how Leaves of Absence and Permitted Election Changes work together. [Download](#) [Slide Handout](#)

Compliance Services Basics

- Compliance Services Help
- Non-discrimination Testing
- Wrap Documents
- ACA Resources
- Required ACA Reporting
- Webinars
- Compliance Buzz

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Agenda

- Tax Reform Review
- 2018 in Review
- Current ACA Landscape
- 2019: Looking Ahead
- Legislative Outlook



Tax Reform Review

Tax Reform

- After months of debate on tax reform, 12/20/17 the House by a vote of 224-201, passed the “[Tax Cuts and Jobs Act](#)” (H.R. 1) to overhaul the tax code.
- The House had originally passed the legislation 12/19/17 by a margin of 227-203 and the Senate passed the legislation early 12/20/17 by a margin of 51-48
 - Due to the need for 3 small technical corrections to stay in line with Senate rules, it required a second House vote 12/20/17
- **President Trump signed into law 12/22/17**

Tax Reform Highlights

- **Dependent Care Flexible Spending Accounts**
 - Proposed changes to Dependent care assistance flexible spending arrangements **were not** adopted as part of the final legislation and remain as they are in current law.
- **Adoption Assistance**
 - Proposed changes to Adoption Assistance **were not** adopted as part of the final legislation and remain as they are in current law.
- **Education Assistance Programs**
 - Proposed changes to Education Assistance Programs **were not** adopted as part of the final legislation and remain as they are in current law.

Tax Reform Highlights

- **Transportation Plans**

- Qualified transportation fringe benefits, such as parking and transit passes, can continue to be offered on a **pre-tax basis for employees.**
- **Employers can no longer deduct** expenses for qualified transportation fringe benefits effective for tax years beginning after December 31, 2017.
- **Qualified bicycle commuting expenses will no longer be tax exempt** to employees effective for tax years beginning after December 31, 2017.

Tax Reform Highlights

- **Itemized Deduction Threshold Reduced to 7.5% for all taxpayers for 2017 and 2018.**
- **Inflation Adjustments.**
 - Beginning in 2018, many dollar amounts in the Code—including some benefit-related amounts—that are currently adjusted for inflation using the Consumer Price Index for All Urban Consumers (“CPI-U”) will instead be adjusted using the Chained Consumer Price Index for All Urban Consumers (“C-CPI-U”). Increases will be lower based upon this method.
- **Individual Mandate under the ACA**
 - Eliminates the Affordable Care Act (ACA) mandate for individuals purchasing health insurance for months **beginning after December 31, 2018.**

Tax Reform Highlights

- **Employer Tax Credit for Paid Family and Medical Leave (FMLA)**
 - New tax credit for eligible employers providing paid FMLA to their employees.
 - To be eligible, employers must have a written program that pays at least 50% of wages to qualified employees for at least two weeks of annual paid family and medical leave.
 - Eligible employers paying 50% of wages may claim a general business credit of 12.5% of wages paid for up to 12 weeks of family and medical leave a year.
 - The credit increases to as much as 25% if the rate of payment exceeds 50%.
 - The provision is generally effective for wages paid in taxable years beginning after December 31, 2017, and before January 1, 2020.
 - **IRS Notice 2018-71** FAQ-provides guidance on the employer credit

Tax Reform

- **What was not included?**
 - Other provisions of the ACA, including the excise tax on high cost health insurance (a/k/a the “Cadillac Tax”)
 - Tax treatment of employee contributions to 401(k), 403(b) and 457 plans
 - Employer exclusion on employer-provided health care benefits were not addressed in the tax reform legislation.
- It remains to be seen whether the current Congress will pass any further changes to the ACA prior to the 2018 election cycle.



2018 in Review

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2018 in Review

- **January 2018**

- **Proposed Rules Association Health Plans (1/5/18)**

- Response to October 2017 Executive Order
 - New rules would propose to allow employers in the same geographic or metropolitan area or in the same industry to commonly sponsor a single group health plan for their employees
 - Under the proposed rules, employers may band together for the sole purpose of sponsoring health insurance
 - Provide smaller employers with more bargaining power
 - No pre-existing conditions, cover preventive care
 - Not required to provide ACA required essential benefits (i.e. maternity coverage, behavioral health for example)

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2018 in Review

- **January 2018**

- **Bill ending Government Shutdown through February 8th (1/23/18)**

- Delay of the “Cadillac” tax on high-cost employer-sponsored health plans for two additional years to January 1, 2022
 - Delay of the medical device tax until January 1, 2020
 - Moratorium of the Health Insurance Tax for 2019 (even though it remains in effect for 2018)
 - Funding of the Children’s Health Insurance Program (CHIP) for 6 more years.

2018 in Review

- **February 2018**

- **Proposed Rule (2/20/18) on Short-term, Limited Duration Health Insurance (STLDI)**

- Response to October 2017 Executive Order
 - STLDI exempt from ACA requirements for individual market health insurance
 - Proposed regulations would expand period of coverage to up to 12 months

2018 in Review

- **March 2018**

- **HSA Transition Relief until 2020 for State Mandated Male Sterilization and Contraceptives**

- **IRS Notice 2018-12**

- Transition for individuals covered by high deductible health plans that paid for male sterilization and male contraceptive expenses below the minimum required deductible to be HSA compatible
 - Temporarily eligible to make HSA contributions

2018 in Review

- **April 2018**

- **Internal Revenue Bulletin 2018-10 (4/26/18)**

- **Due to tax reform, IRS recalculated 2018 indexes for inflation using the Chained Consumer Price Index for All Urban Consumers (C-CPI-U)**

- Health Care FSA and Transportation Plan Limits remain unchanged
 - Health Savings Accounts Family Maximum **reduced \$50 to \$6,850**
 - » **Clarifications on how to correct withdrawals made based upon prior notice**
 - Adoption Assistance Programs reduced annual exclusion to \$13,810 and income thresholds \$207,140-\$247,140.
 - Archer Medical Savings Accounts, reduced self only maximum out of pocket and minimum family deductible to \$4,550.

2018 in Review

- April 2018

- ACA Parameters

- The HHS Notice of Benefit and Payment Parameters for 2019 final rule released on April 9th, 2018 includes CMS standards for issuers and Exchanges, generally for plan years beginning on or after January 1, 2019.
 - 2019-Out of pocket limits for in network essential health benefits \$7,900 Single and \$15,800 Family

2018 in Review

- April 2018

- Disability Rules

- After postponing the effective date of Obama-era regulations on claims and appeals for disability benefits, the Department of Labor [announced](#) on January 5, 2018 that it would allow the regulations to go into effect for claims filed after **April 1, 2018**.
 - The regulations will apply to most – but not all – claims where benefits are conditioned on a finding of disability.
 - This may include certain benefits under retirement plans, in addition to benefits under long-term disability plans and some short-term disability plans.
 - **If the new rules are not followed**, a disability claimant will be deemed to have exhausted all the administrative remedies under the plan. Which means that the claimant will no longer be required to continue on with the plan's claims procedures, and **may immediately file a lawsuit under ERISA for relief**.

2019: Looking Ahead

- **Department of Labor (DOL) Disability Claims Rule (cont.)**

- **Where applicable, the regulations will:**

- increase the amount of information that must be provided to a claimant during the claims and appeals process, including:
 - a copy of any specific internal rule, guideline, protocol, standard or other criteria relied upon in making an adverse benefit decision.
 - documentation of the reasons for any disagreement with the treating physician.
 - if the plan considers a new reason for an adverse benefit decision, require disclosure of that reason and provide a reasonable opportunity for the claimant to respond.
 - require language assistance for non-English speaking claimants under some circumstances.
 - prohibit a plan from considering the likelihood of a service provider denying a claim as part of any hiring, compensation, promotion, termination or similar review of a service provider.

2018 in Review

- **May 2018 Revenue Procedure 2018-30 (5/10/18)**

Calendar Year	2019	2018
HSA Maximum Annual Contribution Limit (Self-only)	\$3,500	\$3,450
HSA Maximum Annual Contribution Limit (Family)	\$7,000	\$6,900
HSA Catch-up Contribution Limit	\$1,000	\$1,000
HDHP Minimum Annual Deductible (Self-only)	\$1,350	\$1,350
HDHP Minimum Annual Deductible (Family)	\$2,700	\$2,700
HDHP Maximum Out-of-pocket (Self-only)	\$6,750	\$6,650
HDHP Maximum Out-of-pocket (Family)	\$13,500	\$13,300
Catch Up Contribution (Individuals 55 and older)	\$1,000	\$1,000

2018 in Review

- **May 2018 Revenue Procedure 2018-34 (5/22/18)**
 - [Rev. Proc. 2018-34](#) sets out the applicable percentage table for 2019, and provides the required affordability contribution percentage is **9.86%** for plan years beginning in **2019**.

2018 in Review

- **June 2018**
 - **Final Rule on Association Health Plans (AHP)**
 - **6/19/18, DOL after considering over 900 comments issued final rule**
 - AHP exists for the purpose of sponsoring a group health plan for its employer members, and has at least one substantial business purpose unrelated to offering group health benefits.
 - AHP must have an organizational structure, commonality of interest.
 - AHP employer members must employ at least 1 employee covered under the health plan under the AHP. Allow working owners to participate.
 - **Effective date:**
 - » **9/1/18** for fully insured AHPs
 - » **1/1/19** for already existing self insured AHPs that choose to meet the new regulation requirements
 - » **4/1/19** for new self insured AHPs

2018 in Review

- **August 2018**

- **Final Rule on Short Term Limited Duration Insurance (STLDI) (8/3/18)**

- This final rule amends the definition of short-term, limited-duration insurance for purposes of its exclusion from the definition of individual health insurance coverage. This action is being taken to lengthen the maximum duration of short-term, limited-duration insurance, which will provide more affordable consumer choices for health coverage.
 - **Effective date:** These final regulations are effective on October 2, 2018.
 - **Applicability date:** Insurance policies sold on or after October 2, 2018 must meet the definition of short-term, limited-duration insurance contained in this final rule in order to be considered such insurance.

2018 in Review

- **August 2018**

- **IRS Updated Employer Shared Responsibility Q&A**

- Add new **Q&A 18** that clarified that an employer does not automatically become an Applicable Large Employer (ALE) for purposes of the employer mandate just because of participation in an Association Health Plan (AHP).
 - Only time that multiple employers are treated as a single employer for purposes of determining whether the employer is an ALE is if the employers have a certain level of common or related ownership.

2018 in Review

- **September 2018**

- **Inflationary Adjustments for 2019**

- August 2018 CPI was released September 13, 2018 by the DOL. Thomson Reuters used the C-CPI-U for the 12 month period ending August 31 and reported projection inflation adjustments for 2019
 - **Revenue Procedure 2018-57** announced updates 11/15/18
 - Health Care FSA increased to **\$2,700** per plan year
 - Parking increased to **\$265** per month
 - Transit increased to **\$265** per month
 - Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) increased to **\$5,150** Single and **\$10,450** Family

2018 in Review

- **October 2018**

- Health Reimbursement Arrangements (HRA) Proposed Expansion

- 10/23/18 Proposed regulations in response to Executive Order issued October 2017
 - Taxpayers cannot rely on the proposed regulations.
 - Proposed Effective Date January 1, 2020 after comment period and final guidance
 - **Allow 2 new types of HRAs**
 - Premium Reimbursement HRA
 - Excepted Benefit HRA

2018 in Review

- **October 2018 Health Reimbursement Arrangements (HRA) Proposed Expansion (cont.)**

- **Premium Reimbursement HRA**

- Employer does not offer traditional major medical coverage to the employee or others in the same class of employees.
 - Employee is only eligible for reimbursement of individual health insurance premiums under this arrangement if employee and all HRA covered dependents are actually enrolled in a major medical plan purchased in the individual market or on the Exchange.
 - Substantiation is required for reimbursement.
 - A notice must be provided to employees 90 days prior to the start of the plan year or prior to the effective date of coverage if the employee becomes eligible after the start of the plan year.

2018 in Review

- **October 2018 Health Reimbursement Arrangements (HRA) Proposed Expansion (cont.)**

- **Premium Reimbursement HRA (cont.)**

- HRA must be offered to all employees within a designated class (Full-time; Part-time; Seasonal; Employees subject to a collective bargaining agreement; Employees subject to a waiting period; Non-resident aliens with no US source income; Employees under the age of 25, Employees whose principal place of employment is in the same rating area). For purposes of Full-time, Part-time and Seasonal classes, the employer will use Code Section 105 or 4980H)
 - Employees must be allowed to opt out and waive benefits at least annually, as this HRA will constitute minimum essential coverage and may prevent the individual from being eligible for the premium tax credit for Exchange coverage.

2018 in Review

- October 2018 Health Reimbursement Arrangements (HRA) Proposed Expansion (cont.)
 - **Excepted Benefit HRA**
 - Employees are eligible only if they are also offered coverage under another group health plan sponsored by the same employer. Employees are not required to also participate in the employer sponsored coverage.
 - Employees cannot also be offered Premium Reimbursement HRA.
 - The terms and conditions must be the same for all similarly situated classes of employees.

2018 in Review

- October 2018 Health Reimbursement Arrangements (HRA) Proposed Expansion (cont.)
 - **Excepted Benefit HRA (cont.)**
 - Allows up to **\$1,800** per year (adjusted for inflation) plus any carryover amounts in tax free reimbursements.
 - Reimbursements may include:
 - General medical expenses (OTHER than group health insurance or any individual market health premiums)
 - COBRA Premiums
 - Short Term Limited Duration Insurance Premiums
 - Excepted Benefit Premiums

2018 in Review

- **November 2018**

- **Pension Plan Limits**

- **November 1, 2018**, the IRS issued [Notice 2018- 83](#) announcing the cost of living adjustments for pension plans and other retirement-related items for the tax year 2019.
- **2019 limitations** used for purposes of pension and **cafeteria plan nondiscrimination testing** increase as follows:
 - The dollar limitation under Section 416(i)(1)(A)(i) concerning the definition of key employee in a top-heavy plan will increase from \$175,000 to **\$180,000 in 2019**.
 - The limitation used in the definition of highly compensated employee under Section 414(q)(1)(B) will increase from \$120,000 to **\$125,000 in 2019**.

2018 in Review

- **November 2018**

- **November 5, 2018-Notice 2018-85** Patient Centered Outcome Research Institute Fees (PCOR)
 - Increase to \$2.45 per covered life for plan ending after **October 1, 2018** and before **October 1, 2019**
- **November 7, 2018- 2** final rules on religious and moral objections to the coverage of contraceptives under the preventive services requirement of the Affordable Care Act (ACA) and accommodations for the objections.
- **November 9, 2018-** IRS released proposed amendments to the regulations applicable to hardship withdrawals (the “Proposed Regulations”). The Proposed Regulations will generally begin to apply to hardship withdrawals taken in plan years beginning in 2019.

2018 in Review

- **November 2018**

- **November 19, 2018-Notice 2018-89** This notice provides guidance on the treatment of leave-based donation programs to aid victims of Hurricane Michael.
- **November 20, 2018 Notice 2018-88**, is intended to initiate and inform the process of developing guidance under sections 4980H and 105(h) that would address these issues, and requests comments on potential approaches developed by the Treasury Department and the IRS, so employers understand how to structure integrated HRAs to avoid assessable payments (section 4980H) and potential loss of the exclusion from income for employer-provided health benefits (section 105(h)).

Current ACA Landscape

- **Adult children can remain on parent's health plan to age 26**
- **PCOR Fees (July 31st)-thru plans ending before 10/1/19**
 - Apply to health insurance, HRAs and non-excepted health FSAs
 - **\$2.45** per covered life (for plans ending on or after October 1, 2018 and before 10/01/19); **\$2.39** (for plans ending on or after 10/1/17 and before 10/01/18) (indexed annually)
 - For health FSAs and HRAs, only count employee; health insurance, count each covered life
- **Form W-2 Reporting: 250+ W-2s must provide health plan info.**
 - Value of employer-sponsored health care (not incl. HRAs)
- **Over-the-counter medication prescription requirement**
- **HSA 20% penalty on non-medical expenses**

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Current ACA Landscape

- **Non-Discrimination Testing**
 - Currently necessary for self-insured plans but not insured plans
 - **Enforcement for insured plan testing delayed until guidance issued**
 - **Testing should be done annually, at plan year end**
 - Unofficial testing early in plan year can reveal issues/potential failure
 - **All employers must do testing, even church plans and gov't entities**

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Current ACA Landscape

• Summary of Benefits and Coverage (SBC)

- Statement that health plan does/doesn't provide MEC and/or minimum value
- Required for newly-eligible employees and at annual open enrollment for health insurance plans, most HRAs and non-excepted health FSAs
 - **SBC is NOT required for:**
 - Retiree-only HRAs, excepted HRAs (dental & vision only)
 - Excepted health FSAs
 - Dental and vision insurance plans
- SBC template finalized on April 6, 2016
 - **Applied beginning on first day of the 1st open enrollment period starting on or after April 1, 2017**
 - For calendar year plans, the open enrollment period relating to coverage starting on Jan. 1, 2018

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Current ACA Landscape-Employer Reporting/Tax Information

IRS Form or Schedule	Who Provides	What is it	Benefit Related	Deadline to provide to individuals
Form 1095-A	Marketplace/Exchange	Proof that an individual is enrolled in qualified health plan on the Health Insurance Marketplace and used by individuals to calculate/reconcile the premium tax credit	Health Insurance	1/31/19
Form 1095-B (Insured plan)	Insurance carrier	Proof that an individual/family is enrolled in minimum essential health coverage (MEC)	Health Insurance	1/31/19* *If this deadline is extended, Individuals do not need to wait for this form to prepare their tax return.
Form 1095-B (self-funded plan*) Note: Does <u>not</u> include HRAs integrated with major medical plan or Health FSAs.	Employer	Proof that an individual/family is enrolled in minimum essential health coverage (MEC)	-Self-funded health plans -Retiree HRA -PEB -Participants in active employee HRA that permits employees enrolled in spouse's employer's health plan to participate. -COBRA Beneficiary	1/31/19* *If this deadline is extended, Individuals do not need to wait for this form to prepare their tax return. Forms 1094-B and 1095-B due to IRS 2/28/19 or 4/1/19 if filing electronically

Current ACA Landscape-Employer Reporting/Tax Information

IRS Form or Schedule	Who Provides	What is it	Benefit Related	Deadline to provide to individuals
Form 1095-C	Employer	Provided to Full-time employees of an Applicable Large Employer (ALE) regarding the details of whether or not an employee has individual/family affordable, minimum essential coverage (MEC) under the employer plan and for what months they are covered under the plan.	<ul style="list-style-type: none"> Health Insurance 	1/31/19* *If this deadline is extended Individuals do not need to wait for this form to prepare their tax return. Forms 1094-C and 1095-C due to IRS 2/28/19 or 4/1/19 if filing electronically
Form 1099-SA	HSA Custodian/Trustee (i.e. Avidia Bank)	Provides total HSA distributions for the year	<ul style="list-style-type: none"> HSA 	1/31/19
Form 5498-SA	HSA Custodian/Trustee (i.e. Avidia Bank)	Provides total HSA contributions for the year	<ul style="list-style-type: none"> HSA 	5/31/19

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Current ACA Landscape-Employer Reporting/Tax Information

Employer Penalty	2015	2016	2017	2018	2019
IRC §4980H(a) “no offer” penalty	\$2,080/yr (\$173/mo)	\$2,160/yr (\$180/mo)	\$2,260/yr (\$188.33/mo)	\$2,320/yr (\$193.33/mo)	\$2,500/yr (\$208.34/mo)
IRC §4980H(b) “unaffordable/ not minimum value coverage” penalty	\$3,120/yr (\$260/mo)	\$3,240/yr (\$270/mo)	\$3,390/yr (\$282.50/mo)	\$3,480/yr (\$290/mo)	\$3,750/yr (\$312.50/mo)

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Current ACA Landscape-Employer Reporting/Tax Information

- **Employer Shared Responsibility (Pay-or-Play)**

- The IRS has updated the [Q&A on the employer mandate](#) to include new information on the notices that will be sent to employers over the next few weeks regarding any potential penalties for the 2015 reporting year.
- For the **2015 calendar year**, the IRS issued **Letter 226J** informing Applicable Large Employers (ALE) of their potential liability for an employer shared responsibility payment, if any, in late 2017.
- For the **2016 calendar year**, the IRS is expected to issue Letter 226J later in 2018

Current ACA Landscape-Employer Reporting/Tax Information

- **Employer Shared Responsibility (Pay-or-Play) (cont.)**

- [Letter 226J](#) will include:
 - a brief explanation of section 4980H,
 - an employer shared responsibility payment summary table itemizing the proposed payment by month and indicating for each month if the liability is under section 4980H(a) or section 4980H(b) or neither,
 - an explanation of the employer shared responsibility payment summary table,
 - an employer shared responsibility response form, Form 14764, “ESRP Response”,

Current ACA Landscape-Employer Reporting/Tax Information

• Employer Shared Responsibility (Pay-or-Play) (cont.)

– [Letter 226J](#) will include (cont.):

- an employee PTC list, Form 14765, “Employee Premium Tax Credit (PTC) List” which lists, by month, the ALE’s assessable full-time employees (individuals who for at least one month in the year were full-time employees allowed a premium tax credit and for whom the ALE did not qualify for an affordability safe harbor or other relief (see instructions for Forms [1094-C](#) and [1095-C](#), Line 16), and the indicator codes, if any, the ALE reported on lines 14 and 16 of each assessable full-time employee’s Form 1095-C,
 - a description of the actions the ALE should take if it agrees or disagrees with the proposed employer shared responsibility payment in Letter 226J, and
 - a description of the actions the IRS will take if the ALE does not respond timely to Letter 226J.
- The response to Letter 226J will be due by the response date shown on Letter 226J, which generally will be 30 days from the date of Letter 226J.

Current ACA Landscape-Employer Reporting/Tax Information

• Employer Shared Responsibility (Pay-or-Play) (cont.)

- [Letter 5699](#). The IRS is now sending [Letter 5699](#) to employers it believes were ALEs that may have failed to submit the required Forms. In particular, Letter 5699 requests that the employer confirm the name and Employer Identification Number it used when filing the Forms along with the date such filing was made. Letter 5699 also reminds employers that there are penalties for failing to file the Forms.
- [Responding to Letter 5699](#). Employers must respond to Letter 5699 within **30 days** of receipt. ALEs that have not filed the Forms for the 2016 reporting year can provide them to the IRS with their response to Letter 5699. Alternatively, ALEs that have not filed the Forms can commit to filing them within 90 days of the date of the letter. In either case, the ALE must also explain the reason for the late filing.
- Employers that receive [Letter 5699](#) may also respond by either: (i) claiming that they were not an ALE for the year in question; or (ii) explaining why they did not file the Forms and any actions they plan to take to remedy the failure.

Current ACA Landscape-Employer Reporting/Tax Information

• Employer Shared Responsibility (Pay-or-Play) (cont.)

- Letter 5699 instructs the business they must respond to the IRS **within 30 days** and specify one of the following:
 - I am subject to the employer mandate and already filed the forms.
 - I am subject to employer mandate, did not file, but am including paper copies of the forms that should have been filed.
 - I am subject to the employer mandate, did not file, but will file the forms electronically within 90 days of the date of this letter.
 - I was not subject to the employer mandate for the year in question.
 - It is important for any business that receives IRS Letter 5699 to respond to the IRS within the allotted timeframe, with the appropriate information.

Current ACA Landscape

2018 Penalties for not timely filing or providing Forms 1094 and 1095:

Penalty Type	Per Violation	Annual Maximum	Annual Max. for Employers with \$5 Million or Less in Gross Receipts
General	\$260	\$3,178,500	\$1,059,500
Corrected Within 30 Days	\$50	\$529,500	\$185,000
Corrected After 30 Days but Before Aug. 1	\$100	\$1,589,000	\$529,500
Intentional Disregard	\$520	None	N/A

Current ACA Landscape

- “Cadillac Tax” (delayed until **2022**)
 - **H.R. 195 to keep the government funded to 2/8/18**
 - 40% excise tax on amounts of aggregated health benefits in excess of \$10,200 for single coverage and \$27,500 for family coverage (indexed for inflation)
 - Insurance companies liable for excise tax on insured plans
 - Employers/plan sponsors liable for excise tax on self-funded plans
 - Excise tax will be deductible
 - Actual regulations have yet to be issued

2019: Looking Ahead- What’s In Your Open Enrollment Tool Kit?

2019: Looking Ahead

– Employer Notices

- **Medicare Part D Notice**-Before October 15th
- **Grandfathered Plan Notice** (if applicable) upon initial enrollment and annually with all plan communications and materials
- **Notice of Special Enrollment Rights**
 - Prior to initial enrollment, upon renewal of plan coverage, within 90 days of special enrollment, within 7 business days following receipt of request
- **Health Insurance Exchange Notice**-14 days of new hire
- **Women’s Health and Cancer Rights Act (WHCRA) Notice**-upon enrollment and annually thereafter

2019: Looking Ahead

– Employer Notices (cont.)

- **Children’s Health Insurance Program (CHIP) Notice**-annually before the start of each plan year
- **Newborns’ and Mothers’ Health Protection Act Notice**-provide in the SPD for a plan providing maternity and infant coverage
- **Initial COBRA Notice**- within 90 days after commencement of coverage
- **HIPAA Privacy Notice**-at least once every 3 years
- **Wellness Program Disclosure**-in plan materials that describe the terms of a health-contingent wellness program
- **ADA Notice Regarding Wellness Program**-must be provided before an employees provides any health information for purposes of a wellness program
- **Michelle’s Law Notice**-with any notice regarding a requirement for certification of student status under a plan that bases eligibility for coverage on student status (and that provides coverage beyond the age of 26).

2019: Looking Ahead

- ERISA Plan Document and SPD requirement
 - Benefit Booklets/Insurance Certificates alone will not satisfy the SPD requirement and a Wrap Plan Document and SPD will help satisfy this requirement
- Summary Plan Description (SPD)
 - To plan participants 120 days after a plan is adopted
 - To new plan participants within **90 days** after plan coverage begins
 - Every **5 years** if changes are made or plan is amended
 - Every **10 years** if no changes
- Summary of Material Modification (SMM) must be given to participants when **significant change** is made to terms or coverage
- Summary Annual Report (SAR) must be provided within **9 mo.** of close of plan year if Form 5500 was filed

2019: Looking Ahead

- Review Cost-Sharing Limits for 2019
 - Effective for plan years beginning on or after **1/1/2019**, ACA out-of-pocket limits on essential health benefits cannot exceed
 - **2019: \$7,900 self-only coverage and \$15,800 for family coverage**
 - Remember, HDHP limits for HSA compatibility are different
 - **2019: \$6,750 self-only and \$13,500 family**

2019: Looking Ahead

- **Review Health FSA Plan Design**

- Health FSA elections

- **Health FSA maximum employee election is \$2,650 (2018) and \$2,700 (2019)**

- Per employee, per plan year (indexed annually for inflation)
- Pro-rate for short plan yr (e.g., short yr to align w/health ins.)
- Employer contributions don't count toward maximum limit (unless can be cashed out)
- Rollover does not count toward maximum limit

- Health FSA waiting period

- **Non-excepted health FSA waiting period can't be greater than 90 days.**
- **Waiting period for employer-sponsored medical insurance cannot be longer than waiting period for health FSA**

2019: Looking Ahead

- **Review Health FSA Plan Design**

- Health FSA interaction with HSAs

- **Grace Period can impact HSA eligibility until grace/run-out is over**
- **FSA rollover can impact HSA eligibility for entire next plan year**
- **Consider adding a limited health FSA**

- Health FSA cannot be used to pay premiums for individual medical policies or employer-sponsored health insurance

2019: Looking Ahead

- **Review HRA Plan Design**

- Integration
 - **Employee must be enrolled in employer-sponsored health insurance in order to participate in HRA (unless retiree-only or PEB HRA)**
- No reimbursement of individual medical policies (except retiree-only HRAs or QSEHRA)
- New HRA options not available until **at least 1/1/2020**
- Effective 1/1/18, HRAs can only reimburse expenses associated with family members if they are covered under employer-sponsored medical plan
- Annual opportunity for employees to opt-out
 - HRAs (other than those consisting solely of excepted benefits) generally constitute MEC and could prevent an individual from receiving a premium tax credit/subsidy on Marketplace

2019: Looking Ahead

- **Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)**

- 21st Century Cures Act enacted December 13, 2016
- Employer with fewer than 50 employees and does not offer group health insurance
- Employer must provide 90 day notice to employees in advance of establishing the small employer HRA. (Transition Relief: The notice requirement will be met if the notice is provided within 90 days of the effective date of the law.)
- QSEHRA must be funded solely by the employer
- QSEHRA can be set up to pay for or reimburse employees' medical expenses, including premiums for individual health insurance coverage or Medicare supplemental insurance.

2019: Looking Ahead

- **Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)**

- Payments or reimbursements for employees who can show proof of health coverage, would be limited to a **\$5,150 (2019)** a year for individuals and **\$10,450 (2019)** for an employee and family members. (Subject to cost of living increase in the future.) Must be prorated by months of coverage in a year.
- Payments or reimbursements would not be treated as employer-provided coverage for any months that employee does not have minimum essential coverage. Reimbursements would be taxable.
- The employee covered under the small employer HRA would not be eligible for premium assistance tax credit if QSEHRA is considered affordable coverage.
- Employers would be required to report **QSEHRA** contributions any reimbursements that are taxable because the employee did not maintain minimum essential coverage, on their **employee's W-2**.

- **IRS Notice 2017-67** provides additional guidance

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2019: Looking Ahead

- **Department of Labor (DOL) Fiduciary Rule**

- In late August 2018, the Office of Management and Budget approved the DOL's [proposal](#) to extend the transition period for full implementation of the new Fiduciary Rule and related prohibited transaction exemptions ("PTEs") by 18 months—from January 1, 2018 to July 1, 2019.
- The Fifth Circuit officially vacated the Department of Labor (DOL) fiduciary rule as of June, 2018.
- The Labor Department plans to issue in September 2019 a revised final fiduciary rule package to replace the one vacated this spring by the U.S. Court of Appeals for the 5th Circuit, according to Labor's fall regulatory agenda.

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2019: Looking Ahead

- **Department of Labor (DOL) Penalties**

– The 2018 adjustments are effective for penalties assessed after January 2, 2018, with respect to violations occurring after November 2, 2015.

Description of Violation	Old Penalty	New Penalty
Failure or refusal to file a Form 5500	\$2,097 per day	\$2,140 per day
Failure to provide documents and information requested by the DOL	\$149 per day	\$152 per day
Failure to provide reports to certain former participants and beneficiaries and failure to maintain records	\$28 per day	\$29 per day
Failure by an employer to inform employees of CHIP coverage opportunities	\$112 per day per employee	\$114 per day per employee
Violations of the Genetic Information Nondiscrimination Act (GINA), such as establishing eligibility rules based on genetic information or requesting genetic information for underwriting purposes	\$112 per participant per day	\$114 per participant per day
Failure to provide annual Summary of Benefits Coverage (SBC)	\$1,105 per failure	\$1,128 per failure

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2019: Looking Ahead

- **Court Vacates EEOC Incentive Wellness Regulations Beginning in 2019**

- Upon the request of the plaintiff American Association of Retired Persons (AARP) the court agreed to reconsider its original decision.
- The court agreed in its new opinion :
 - To vacate the EEOC’s final regulations as they pertain to incentives allowed under wellness plans, citing as one reason for its decision the court’s view that a 2021 applicability date for the new rules would not be sufficiently timely.
- **In order to provide employers with advance notice of the rule changes, however, the court agreed to delay vacating the rules until January 1, 2019.**
- Prior to that date, however, plan sponsors must continue to comply with the regulations as currently in effect.
- In an order accompanying its decision, the court directed the EEOC to issue its notice of proposed rulemaking by August 31, 2018 and to file a revised status report with the court by March 30, 2018.
 - Court strongly encouraged the EEOC to take any measures necessary to ensure that the new rules take effect well before 2021.

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2019: Looking Ahead

- **Proposed Changes to Form 5500**

- On July 11, 2016 the Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) and the Internal Revenue Service (IRS) issued a proposed rule on annual reporting and disclosure relating to the Form 5500 Annual Return/Report.
- The proposed rule would update Form 5500 reporting obligations for retirement and health plans subject to annual reporting requirements under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (IRC or Code).
- **The proposed revisions and regulations to Form 5500 would apply for plan years beginning on or after January 1, 2019.** If revisions are adopted, EFAST2 will begin processing Form 5500s under a new contract for the 2019 plan year beginning January 1, 2020.

- **The proposed changes to Form 5500 will affect plans in two big ways:**

1. The proposed rules introduce a basic reporting requirement for all plans that provide group health benefits – even those that have fewer than 100 participants and are covered by Title I of ERISA.
2. The proposed rules create a new schedule (Schedule J), which would be required for all group health plans.

Legislative Outlook

- Legislative Prospects -

- July 19, 2018, the House Rules Committee released 2 HSA related bills (Rules Committee 115-82 and 115-83) that combined 10 of 11 bills approved by the House Ways & Means Committee on July 12th
- July 23, 2018, **H.R. 6199 Restoring Access to Medication and Modernizing Health Savings Accounts Act of 2018** and **H.R. 6311 Increasing Access to Lower Premium Plans and Expanding Health Savings Accounts Act of 2018**
- On July 25, 2018, under a closed-rule process, the **H.R. 6199** vote passed with bipartisan support 277-142 and **H.R. 6311** vote passed with bipartisan support 242-176.
- Bills moved to Senate for consideration. To date there has been no vote.

Legislative Outlook

- Legislative Prospects -

- **H.R. 6199 and H.R. 6311**

- Allowing reimbursement through an HSA, HRA, MSA, or Health Care FSA of approved over-the-counter drugs without a prescription
- Allowing reimbursement through an HSA, HRA, MSA, or Health Care FSA of approved menstrual care products (i.e. tampon, pad, liner, cup, sponge, or similar product used by women with respect to menstruation or other genital-tract secretions) through those accounts.
- Treating certain sports and fitness expenses as qualified medical expenses up to certain limits (**\$500** a year for an individual and **\$1,000** a year for a joint return). This includes amounts paid for membership at a fitness facility, participation or instruction in a program of physical exercise or physical activity, or safety equipment for use in a program of physical exercise or physical activity.

Legislative Outlook

- Legislative Prospects -

- **H.R. 6199 and H.R. 6311 (cont.)**

- Allowing some first-dollar flexibility for coverage of specialized services in a HSA-compatible High Deductible Health Plan (Health plans can provide coverage for services before the deductible is met up to **\$250 a year** for an individual and **\$500 a year** for family coverage.).
- Allowing on-site health clinics alongside an HSA without being considered disqualifying coverage as long as significant medical care is not provided.
- Allowing direct primary care arrangements (DPC) (monthly payment to provider) below the deductible and alongside an HSA without being considered disqualifying coverage. For this purpose, a DPC arrangement is one that the individual is provided primary care services by primary care practitioners and the sole compensation for such care is a fixed periodic fee that does not exceed an aggregate of **\$150 a month** for an individual and **\$300 a month** for a family. The monthly fees are treated as qualified medical expenses.

Legislative Outlook

- Legislative Prospects -

- **H.R. 6199 and H.R. 6311 (cont.)**

- Allowing an individual to contribute to an HSA if the individual's spouse has a Health Care FSA, but only if the spouse's Health Care FSA cannot reimburse that individual's medical expenses.
- Allowing Health Care FSA and HRA balances to fund an individual's HSA under certain situations (transfers at the employer's discretion would be capped at **\$2,650** for individuals and **\$5,300** for families. Any conversion taking place during the same year as the FSA or HRA contribution was made will count towards an HSA contribution for that taxable year).
- Increasing HSA contribution limits to the annual out-of-pocket limit for an HSA-qualified high deductible health plan (HDHP). For 2018, annual out-of-pocket limits are \$6,650 Single and \$13,300 Family. **For 2019, annual out-of-pocket limits will be \$6,750 Single and \$13,500 Family.**

Legislative Outlook

- Legislative Prospects -

- **H.R. 6199 and H.R. 6311 (cont.)**

- Allowing individuals who are enrolled in Medicare Part A to contribute to an HSA if they have a HSA qualified HDHP, as well as individuals who have bronze or catastrophic coverage without being considered catastrophic coverage.
- Allowing spousal catch-up contributions to the same HSA account for individuals over the age of 55, rather than separate accounts for each spouse.
- Allowing reimbursement from an HSA for medical expenses incurred prior to establishment of the HSA, as long as the person was enrolled in HDHP coverage and the HSA was established within 60 days of the effective date of HDHP coverage
- Increasing the Health Care FSA rollover maximum to 3x the annual maximum FSA contribution amount.
- Allowing all individuals purchasing health insurance in the Individual Market the option to purchase a lower premium Copper Plan.

Legislative Outlook

- Legislative Prospects -

- The 11th bill approved by the Ways & Means Committee (**H.R.4616**) mid-July, which would delay the Cadillac plan tax, was not included in the either approved bill.
- H.R.5963, a bill to delay the tax on health insurers (which was not considered by the Ways & Means Committee), was added to H.R.6311 by the House Rules Committee.
- If passed in the current form, the provisions in these bills (**H.R. 6199 and H.R. 6311**) would take effect for **plan years beginning after December 31, 2018.**

Legislative Outlook

- **2018-2019 Legislative Activity/Prospects-Stay Tuned...**

- Retirements in Congress
 - **Sen Hatch, Speaker Ryan, etc.**
- Post mid-term elections
 - **Lame Duck session end of 2018**
 - House only scheduled to be in session 10 more days in 2018
 - Senate only scheduled to be in session 12 more days in 2018
 - Possible Changes before the end of 2018?
 - » **Repeal or further delay Cadillac tax**
 - » **Permanently repeal the national Health Insurance Tax (HIT)**
 - » **Change to the 30 hour work week (35 or 40?)**

Legislative Outlook

- **2018-2019 Legislative Activity/Prospects-Stay Tuned...**

- 116th Congress
 - **Democrats regain control of the House and committee chairs in 2019**
 - More use of the “Pay go” rule, which would require offsets for any regulatory changes.
 - » **If you make a change, you need to find a way to pay for it.**
 - **Republicans retain control of Senate**
 - **Divided Congress in 2019, likely means no more repeal and replace ACA or single payer/Medicare for all**
 - Fix Obamacare with bipartisan support
 - Trump may work with Democrats on prescription drug reform

Questions?

Thank you for attending!!

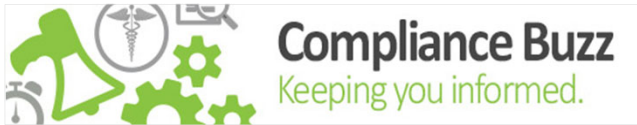
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