Employer Reporting Obligations

AS RELATED TO EMPLOYEES UNDER THE AFFORDABLE CARE ACT

BY WILLIAM DANIELS

Many employers in the trade show industry engage the help of union workers in one capacity or another. Most, if not all, of these employees are covered under the Union's welfare plan (also known as a multi-employer welfare plan). These plans are subject to reporting requirements under the Affordable Care Act. Did you know that the ACA imposes separate disclosure and reporting obligations on both multiemployer funds and their contributing employers (provided that such employers are "applicable large employers" or "ALEs" (i.e., those employers with 50 or more full-time and/or full-time equivalent employees)? These reports are filed with the Internal Revenue Service.

In a nutshell, the multiemployer fund is responsible for providing copies of Forms 1095-B to plan participants and filing a Form 1094-B together with all of the Forms 1095-B with the IRS. The contributing employer (which may be you) is responsible for providing copies of Forms 1095-C to its employees and filing a Form 1094-C together with all of the Forms 1095-C with the IRS. Form 1095-C (together with the Form 1094-C) reports are designed to show the IRS, among other things, whether the employer has offered qualifying group health coverage to at least 95% of the employer's full-time workforce and thus may avoid a "no offer" pay-or-play penalty.

The good news is that interim transition guidance allows an employer to be treated as having offered coverage to a full-time employee if the employer is required by a collective bargaining agreement to contribute on behalf of that employee to a multiemployer plan that provides eligible individuals with coverage meeting the affordability and minimum value requirements and the employer offers coverage to those individuals' dependent children up to age 26. An employer may qualify for this relief if it paid a contribution of any required amount for that month regardless of whether the employee is eligible for coverage.

Not to panic, this is actually the first year that reports were required to be filed by ALEs with the IRS. This article will walk you through your obligations and the potential pitfalls related to these reporting requirements.

Under Internal Revenue Code Section 6055, as enacted pursuant to ACA, providers of health insurance coverage (such as health insurers and employers or multiemployer trust funds sponsoring self-insured plans) must report certain coverage information to the IRS and to covered individuals. The reported information will allow individuals to establish, and the IRS to verify, the months during the year that individuals satisfied the individual mandate by enrolling in minimum essential coverage. For self-insured health coverage, the plan sponsor is responsible for reporting. In the case of a self-insured multiemployer plan, the plan sponsor is the joint board of trustees.

A contributing employer that is an ALE is required to provide a Form 1095-C to each plan participant and also to submit copies of all Forms 1095-C together with a Form 1094-C (the transmittal form) to the IRS. The ALE completes a Form 1095-C for each employee who was a full-time employee for any month during the reporting year. The ALE also completes a Form 1095-C for any non-employees (such as retirees or COBRA beneficiaries) enrolled in a self-insured health plan sponsored by the ALE.

However, where an ALE contributes to a self-insured multiemployer plan sponsored by a joint board of trustees (e.g., a Union welfare plan), the ALE is responsible for completion of only a portion of the Form 1095-C with respect to employees covered by the fund. The fund, in turn, is responsible for providing participants the Form 1095-B (which contains the information that the employer did not supply on the Form 1095-C) as well as submitting to the IRS copies of the Forms 1095-B together with the Form 1094-B (the transmittal form).

In some cases, information that needs to be reported to the IRS on these Forms may be known to the fund and not to the employer. However, there is no requirement that the fund and contributing employers work collaboratively to complete the Forms. Instead, each works independently to complete its own set of forms ("C" forms for employers and "B" forms for the fund). In fact, for the most part, there should be no need to work together or share information. In particular, there is no need for the fund to provide employers with information regarding the months of coverage for each employee covered by the fund because the contributing employer need not supply that information on the C forms. (The employer merely indicates on Line 14 of the Form 1095-C that "no coverage" was offered directly by the employer (Code 1H) and, correspondingly, completes Line 16 (which solicits information about applicable relief) by entering Code 2E (indicating that the employer was required to contribute to a multiemployer plan on behalf of the employee for that month and therefore is eligible for the transition relief).) Likewise, there is no need for the fund to supply information regarding the employee share of the lowest cost monthly premiums for coverage because the contributing employer can leave that line of the form blank.

That said, as a preliminary matter, the fund needs to supply contributing employers with adequate information from which to determine whether they qualify for transition relief (related to the multiemployer special rules associated with Code 1H that allow the ALE to avoid the pay or play penalties – such as whether the fund provides minimum value coverage and whether coverage is available to dependent children. (Affordability information, however, need not come from the fund. Where employees do not contribute towards the cost of coverage, affordability is not an issue. Where employees do contribute towards the cost of coverage, those contributions usually are made through payroll deductions and remitted to the multiemployer fund by the employer, such that the employer should have the information available to make an affordability determination.)

The information submitted to the IRS must be timely and accurate, but these are relatively simple requirements once you learn the process. The most challenging aspect may be with respect to employee social security numbers.

Notwithstanding the above, the fund has no legal requirement to provide accurate social security numbers ("SSNs") to the employer and may, in fact, not even possess such information. This presents a larger issue for reporting employers. The names and SSNs of each employee who was offered health coverage generally must be listed on Form 1095-C. Some employers are already discovering that they may not have valid SSNs for all of their employees. Sometimes the vendor hired to prepare Form 1095-C discovers invalid SSNs when it runs a check on the accuracy of the SSNs provided by the employer. In other cases, the employer isn't learning of the issue until after electronic submission of its reports to the IRS.

Currently, the IRS appears to be accepting the Form 1095-C at face value. However, the IRS is checking SSNs reported on the forms and creating error lists. This practice is known as "accepting with errors." In other words, the IRS will accept the Form 1095-C, but will come back to the employer with discrepancies it finds in the SSNs reported.

Because the IRS is checking the validity of the SSNs reported on Form 1095-C, employers will face an obligation to take affirmative steps to obtain valid SSNs from affected employees. This could subject the employer to the risk of losing valuable employees that may not be able to provide a valid SSN. To complicate matters, if the affected employees are part of a bargaining unit, the employer's efforts to collect valid SSNs will need to be carefully navigated with union involvement and approval.

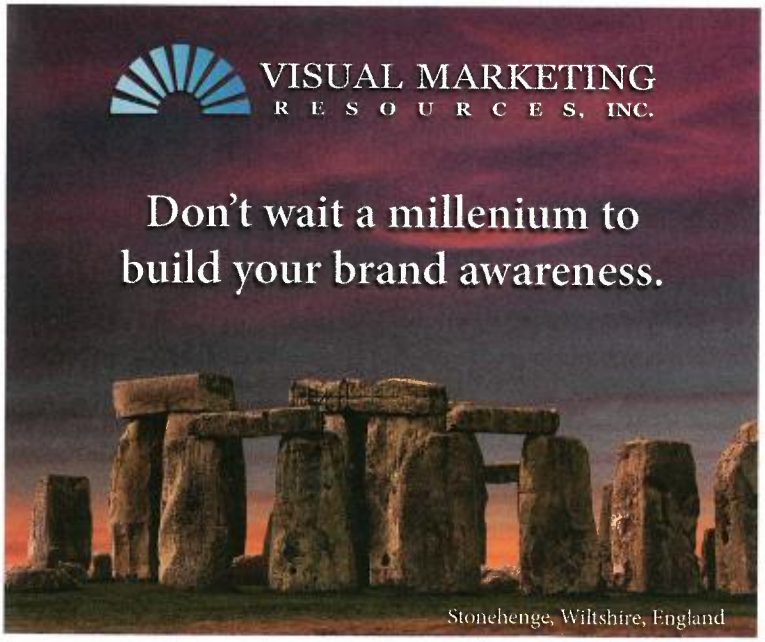
Failure to validate the SSNs of employees may result in fines (though it appears that fines are automatically waived in 2016 if good faith efforts are made to comply with these reporting requirements). A presumptive penalty of $250 is imposed for each failure to include correct specified information with respect to an IRS information reporting requirement, up to $3,000,000 per calendar year. However, these amounts are reduced if failures are corrected by the following dates:

30-Day Rule. If a failure is corrected within 30 days after the required filing date (or the deadline for furnishing individual statements), the per-return penalty is reduced from $250 to $50 per return, and the calendar-year cap is reduced to $500,000.

August 1 Rule. If a failure is corrected after the 30-day rule described above but on or before August 1, the per-return penalty is reduced to $100 per return, and the calendar-year cap is reduced to $1.5 million.

It may be possible that the IRS could share its findings with other government agencies that, in turn, could trigger investigative action by that other agency.

Employers who have discovered that they have invalid or missing SSNs, or who suspect that they may have that problem, are well-advised to contact their employment and immigration counsel regarding what steps they need to take to protect themselves and their workers who may have invalid SSNs. Employers may also want to consult with their employee benefits counsel regarding completion of Form 1095-C. Employment, immigration and benefits counsel may need to help the employer develop a coordinated approach to meeting its related obligations to collect and use valid SSNs.



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