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*The Tax Cuts and Jobs Act, signed into effect late December, creates a new tax credit for wages paid by employers in 2018 and 2019 to employees while on family and medical leave, as defined by the Family and Medical Leave Act (FMLA).*

*The tax credit will range from 12.5% to 25% of the cost of each hour of paid leave, depending on how much of a worker's regular earnings the benefit replaces. Any leave besides FMLA leave or leave paid for or mandated by a state or local government may not be taken into account for purposes of the credit.*

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## Two Major Employee Benefits Changes

On Dec. 22, 2017, the IRS issued a notice that delays the furnishing deadline for 2017 Affordable Care Act (ACA) reporting and President Donald Trump signed the tax reform bill, called the [Tax Cuts and Jobs Act](#), into law, eliminating the individual mandate penalty beginning in 2019. This article briefly summarizes the implications of both of these actions.

### IRS Delays Furnishing Deadline

The IRS' [Notice 2018-06](#) extends the following:

- The due date for furnishing forms under Sections 6055 and 6056 for 2017 for 30 days, from Jan. 31, 2018, to March 2, 2018
- The good-faith transition relief from penalties related to 2017 information reporting under Sections 6055 and 6056

However, Notice 2018-06 does not extend the due date for filing forms with the IRS for 2017. The due date for filing with the IRS under Sections 6055 and 6056 remains Feb. 28, 2018 (April 2, 2018, if filing electronically).

### Repeal of the Individual Mandate Penalty

The Tax Cuts and Jobs Act makes significant changes to the federal tax code. The bill does not impact the majority of the ACA tax provisions. However, it does reduce the ACA's individual shared responsibility (or individual mandate) penalty to zero, effective beginning in 2019.

Individuals continue to be required to comply with the mandate (or pay a penalty) for 2017 and 2018. A failure to obtain acceptable health insurance coverage for these years may still mean a penalty for the individual.

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## Prepare for ACA Health Plan Reporting

The Affordable Care Act (ACA) created reporting requirements under Internal Revenue Code (Code) Sections 6055 and 6056. Under these rules, certain employers must provide information to the IRS about the health plan coverage they offer (or do not offer) to their employees.



Returns are due in early 2018 for health plan coverage offered or provided in 2017. Returns generally must be filed with the IRS by Feb. 28 (or March 31, if filed electronically) of the year after the calendar year to which the returns relate.

For the 2017 calendar year, returns must be filed by Feb. 28, 2018, or April 2, 2018 (March 31, 2018, being a Saturday), if filed electronically. Written statements generally must be provided to employees no later than Jan. 31 of the year following the calendar year in which coverage was provided. For the 2017 calendar year, individual statements must be furnished by March 2, 2018.

### **What reporting requirements apply to my organization?**

Section 6055 applies to health insurance issuers, self-insured plan sponsors, government agencies that provide government-sponsored coverage and other providers of minimum essential coverage.

Section 6056 applies to applicable large employers—the employers subject to the employer shared responsibility rules (those with at least 50 full-time employees, including full-time equivalents).

### **What forms are used for reporting?**

Under both Sections 6055 and 6056, each reporting entity must file all of the following with the IRS:

- A separate statement for each individual; and
- A single transmittal form for all of the returns filed for a given calendar year.

Under Section 6055, reporting entities will generally file Forms 1094-B (a transmittal) and 1095-B (an information return). Under Section 6056, entities will file Forms 1094-C (a transmittal) and 1095-C (an information return) for each full-time employee for any month. Entities that are reporting under both Sections 6055 and 6056 will file using a combined reporting method on Form 1094-C and Form 1095-C.

### **Do I have to file electronically?**

Any reporting entity that is required to file at least 250 returns under Section 6055 or Section 6056 must file electronically. The 250-or-more requirement applies separately to each type of return and separately to each type of corrected return. Entities filing fewer than 250 returns during the calendar year may choose to file in paper form, but are permitted (and encouraged) to file electronically. Electronic filing will be done using the ACA Information Returns (AIR) Program. More information on the AIR Program is available on the [IRS website](#).

## What are the penalties for failing to report coverage?

A reporting entity that fails to comply with the Section 6055 or Section 6056 reporting requirements may be subject to the general reporting penalties for failure to file correct information returns (under Code Section 6721) and failure to furnish correct payee statements (under Code Section 6722).

Penalties may be waived if the failure is due to reasonable cause and not to willful neglect, or may be reduced if the failure is corrected within a certain period of time. Also, lower annual maximums apply for reporting entities that have average annual gross receipts of up to \$5 million for the three most recent taxable years. The penalty amounts for failures related to returns and statements required to be filed or furnished in 2018 are as follows:

- General penalty:
  - \$260 per violation
  - \$3,218,500 annual maximum
  - \$1,072,500 annual maximum for employers with ≤\$5 million in gross receipts
- Corrected within 30 days:
  - \$50 per violation
  - \$536,000 annual maximum
  - \$187,500 annual maximum for employers with ≤\$5 million in gross receipts
- Corrected after 30 days, but before Aug. 1:
  - \$100 per violation
  - \$1,609,000 annual maximum
  - \$536,000 annual maximum for employers with ≤\$5 million in gross receipts
- Intentional disregard\*:
  - \$530 per violation

Contact U.S. Employee Benefits Services Group for more information on reporting requirements.

*\*For failures due to intentional disregard, the penalty is equal to the greater of either the listed penalty amount or 10 percent of the aggregate amount of the items required to be reported correctly.*

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