



August 26, 2015

To: All NECA Members

From Geary Higgins

For the 2015 calendar year, the Affordable Care Act ("ACA") enacted two similar but separate information reporting requirements that mandates entities and employers to file additional forms with the Internal Revenue Service ("IRS"). The two reporting requirements were added to the Internal Revenue Code ("Code") as Sections 6055 and 6056. Below, we have provided an overview of the reporting requirements, including who is responsible for each report and guidance for employers who contribute to a multiemployer plan.

Even though the deadlines for the two reports are not due until 2016, you should already be tracking hours and getting answers to questions you may have **NOW** in order to have the information you need before the first reporting deadline (i.e., January 31, 2016).

Section 6055 – Health Insurance Issuer Reporting Requirements

Code Section 6055 requires every provider of "minimum essential coverage" ("MEC") (i.e., health coverage) to report coverage information by filing Forms 1094-B and 1095-B with the IRS and send a copy to each primary individual listed on the 1095-B Forms. In the case of multiemployer plans, the plan sponsor is responsible for Code Section 6055 reporting, which means that for those employers who contribute to the NECA/IBEW Family Medical Care Plan ("FMCP"), the FMCP will be responsible for preparing and submitting Forms 1094-B and 1095-B in 2016 for the 2015 calendar year for individuals who received coverage through the FMCP.

Generally, the "B Forms" require the plan sponsor to provide each participant's name, Social Security number, and address as well as the Plan's contact information and a list of any and all dependents who received coverage through the plan, and the months in which coverage was provided. For 2015 reporting, Form 1094-B and 1095-B must be filed with the IRS on or before February 28, 2016 (March 31, 2016 if the multiemployer plan chooses to file the forms electronically). However, a copy of Form 1095-B must be distributed to the participant no later than January 31, 2016.

Remember—in the case of a multiemployer plan, Section 6055 reporting is the responsibility of the plan sponsor. Therefore, for any individual you employ and on whose behalf you make contributions to the FMCP, the FMCP is responsible for and will file Forms 1094-B and 1095-B, not you.

However, if you sponsor a separate group health plan for your employees (such as a plan for your office staff), you may be responsible for the Code Section 6055 reporting. Accordingly, you should consult legal counsel to determine your reporting obligations related to any group health plan you may sponsor.

Section 6056 – Applicable Large Employer Reporting Requirements

Code Section 6056, however, requires applicable large employers ("ALE") (i.e., generally, those employers that employ 50 or more full-time employees) to file Forms 1094-C and 1095-C with the IRS on the health coverage provided by the ALE to its full-time employees and to provide statements to those employees about the health coverage that the ALE offered during the previous calendar year (i.e., a copy of Form 1095-C). Please note—Section 6056 reporting **does not** apply to *all* employers, only those employers who are considered "Applicable Large Employers ("ALE")." Only you, the employer, can determine if you are an ALE and if Section 6056 applies to your company (based on the number of full-time

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

3 Bethesda Metro Center * Suite 1100 * Bethesda, MD 20814 * 301 657 3110 * 301 215 4500 FAX

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employees and/or full-time equivalent employees you employ). The federal government has developed calculation methods to determine "Applicable Large Employer" status, and we strongly encourage each employer to consult with legal counsel for further clarification on this matter.

If you determine that you are an ALE and Section 6056 does apply to you, there are two forms you are required to submit to the IRS. The first is Form 1094-C, which essentially serves as a "cover sheet" for all of the Form 1095-Cs that you will submit to the IRS. A Form 1095-C must be prepared and submitted for each individual who was considered a full-time employee in any month during the previous calendar year. Form 1095-C requires the ALE to provide the following general information:

- 1) The full-time employee's name, Social Security number, and address, and the ALE's name, federal Employer Identification Number, and address;
- 2) The months the full-time employee was offered health coverage, the full-time employee's share of the monthly premium (if any), and an indication of whether any Section 4980H safe harbor applies (by using code indicators); and
- 3) The names and Social Security numbers of all dependents covered under the participant's policy and the months in which each dependent was covered under the ALE's insurance plan.

Forms 1094-C and 1095-C must be filed with the IRS on or before February 28, 2016 (March 31, 2016 if filed electronically), and a copy of Form 1095-C must be distributed to the full-time employee no later than January 31, 2016.

Special Considerations for ALEs Contributing to Multiemployer Plans

Information relating to each full-time employee's contact information and months of coverage should be readily available to each ALE from your monthly payroll records that you submit to the multiemployer plan. Please note that under the multiemployer interim guidance¹ provided by the federal government on February 12, 2014, an ALE will be treated as having "offered" health coverage with respect to a full-time employee if the ALE is required by a collective bargaining agreement (or appropriate related participation agreement) to contribute on behalf of that employee to an eligible multiemployer plan. This means that if a monthly contribution is made by the ALE to the plan on behalf of a full-time employee covered pursuant to a collective bargaining agreement, the IRS will consider that ALE as having "offered" health coverage for that month, regardless of whether the employee was actually *eligible for and received* coverage through the plan for that month.

It is extremely important that all ALEs review the instructions for filling out Form 1095-C, which can be found at <http://www.irs.gov/pub/irs-pdf/i109495c.pdf>. Please note the following important pieces of information:

- Page 1 of the instructions states that if the ALE is offering health coverage to some or all of its employees through a multiemployer health plan, the ALE "should not complete Form 1095-C, Part III, for those employees," which pertains to dependent coverage. ***This means that you will not need any information regarding coverage to the full-time employee's dependents who receive coverage through a multiemployer plan.***
- Page 8 of the instructions provides a Safe Harbor Code specifically for multiemployer plans. For every month that the ALE contributes to a multiemployer plan (e.g., the FMCP) on behalf of a full-time employee, the ALE should use the multiemployer plan indicator code "2E" for Part II, Line 16. This will indicate to the IRS that the multiemployer interim guidance applies for that

¹ Please review the multiemployer interim guidance, which can be found at 79 Fed. Reg. 8576 (February 12, 2014), <http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf>, to ensure that you understand what you are certifying. If you do not understand or have additional questions, please consult legal counsel.

employee, which means that the ALE will be considered to have "offered" health coverage to that full-time employee for each month in which the ALE contributed to a multiemployer plan on the employee's behalf, regardless of whether the employee was actually covered by the multiemployer plan for that month.²

The instructions for Forms 1094-C and 1095-C are very detailed, and require careful review to ensure that they are properly completed and filed. ***Please remember, the ALE is responsible (and liable) for preparing and filing Forms 1094-C and 1095-C. The FMCP will not be completing these forms on behalf of any of its contributing employers.*** Therefore, if you have any concerns or questions regarding the completion of these forms, we strongly encourage you to consult legal counsel.

To complete Forms 1094-C and 1095-C, you will need additional information about the multiemployer's coverage that you may not have. For example, if you participate in the FMCP, the FMCP will provide a certification of the following to help you complete Forms 1094-C and 1095-C:

- That coverage offered through the FMCP is considered "minimum essential coverage" and meets the "minimum value" standards established under the ACA;
- That the FMCP's family tier coverage offers coverage to all of the dependents it is legally required to under the ACA (i.e., children under the age of 26, regardless of employment or marital status); and
- That the FMCP does not require participants to contribute any amount to the monthly cost of coverage (this means that if you don't charge your employees for health coverage, the coverage is considered affordable. If you do charge your employees a portion of the premium, however, only you can determine if the FMCP's coverage is considered affordable under the ACA).

However, if you participate in another multiemployer plan, you will have to contact that specific plan to obtain the information you will need to complete Forms 1094-C and 1095-C.

Please keep in mind that if you sponsor a separate group health plan for your employees (such as a plan for your office staff), you will also be individually responsible for the Code Section 6056 reporting for those employees. Accordingly, you should consult legal counsel to determine your reporting obligations related to any separate group health plan you may sponsor.

Once again, we urge all employers who are unsure of their "Applicable Large Employer" status or who have additional questions regarding the ACA's reporting requirements to seek legal counsel on this matter. The full implications of the ACA reporting requirements as a whole are still developing, and this letter is not intended to provide a legal summary to meet their legal obligations under the ACA. To that end, we encourage you to participate in an informational Q&A webinar on September 8, 2015 that will discuss the employer reporting requirements under the ACA (see registration information on page 5 below). This webinar will be live but recordings of the webinar will be made available to those who are unable to attend the live webinar. More information on the webinar and how to register is provided below.

We have also included a checklist prepared by Tiffany Downs, partner and employee benefits practice leader at FordHarrison, LLP, regarding 10 Steps for ACA compliance, which can be used as a general reference in making sure you are compliant with the ACA (see page 5 below).

² On August 6, 2015, the IRS proposed draft instructions for 2015 reporting year that may simplify the reporting requirements for contributing employers using the multiemployer interim guidance. The draft instructions for Forms 1094-C and 1095-C can be found at <http://www.irs.gov/pub/irs-dft/i109495c--dft.pdf>. However, until the proposed / draft instructions are finalized and published, employers should rely on the current instructions.

FordHarrison + NECA Webinar Affordable Care Act Reporting

Date: September 8, 2015
Time: 3:00PM - 4:30PM EST

About the Program

Join Tiffany Downs and Brian Spring as they discuss what employers who contribute to multiemployer plans need to know about Affordable Care Act reporting under Code Sections 6055 and 6056. Topics will include:

1. Overview of the reporting requirements, including who is responsible for reporting under Code Sections 6055 and 6056;
2. Forms 1094-C and 1095-C;
3. What information contributing employers need to comply with the reporting requirements; and
4. Completion of Form 1095-C.

Registration

To register, please visit:

<https://attendee.gotowebinar.com/register/535546094248539138>

MEET THE PRESENTERS



Tiffany D. Downs

Partner
Atlanta Office
tdowns@fordharrison.com
P: 404-888-3961



R. Brian Spring

Associate
Atlanta Office
bspring@fordharrison.com
P: 404.888.3925

10 STEPS FOR ACA COMPLIANCE

Tiffany Downs, Esq.

FordHarrison LLP

Checklist

1. Compliant Plan (minimum essential coverage, minimum value, affordability)
2. Eligibility to participate
3. Offers of coverage
4. Proof of offers of coverage and declinations of coverage
5. Classification of employees
6. Determining Hours of Service, Tracking Hours, and Measurement Periods
7. Taxes – Excise Tax and Cadillac Tax
8. Disclosures – Summary of Benefits Coverage and Notice of Exchange
9. IRS reporting – W-2 form and 1094 and 1095 forms for reporting of coverage
10. Remedies and Options for non-compliance

Considerations

For employers who contribute to a Multiemployer health plan:

- a. Obtain assurances that the plan is compliant with ACA from plan or union
 - i. Essential minimum coverage
 - ii. Minimum value
 - iii. Affordability
 - iv. Disclosure and Reporting requirements
- b. Obtain assurances plan is offered to those who are eligible and proof of offers of coverage
- c. Cadillac tax – Discuss if it will be triggered and who is responsible for paying
- d. Anticipate possible changes in the law and how to address those changes
- e. Options for non-compliance – reopener of CBA, indemnification or termination of participation