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LAMB & BARNOSKY, LLP  
ATTORNEYS AT LAW

## MEMORANDUM

**TO: OUR EMPLOYER CLIENTS**

**FROM: LAMB & BARNOSKY, LLP**

**DATE: JANUARY 20, 2015**

**RE: AFFORDABLE CARE ACT: FINAL EMPLOYER INFORMATION REPORTING REGULATIONS**

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On January 1, 2015, the Affordable Care Act's ("ACA") employer shared responsibility and employer reporting provisions went into effect. "Applicable large employers;" *i.e.*, those with at least 50 full-time and full-time equivalent employees, should have already taken steps to plan for the implementation of the shared responsibility requirements and must now plan for the reporting requirements.<sup>1</sup>

Pursuant to ACA employer reporting regulations, applicable large employers are required to annually file with the IRS forms detailing whether and what health insurance coverage has been provided to full-time employees. A separate form must be distributed to each full-time employee. The IRS has prepared forms (IRS Forms 1094-B, 1095-B, 1094-C and 1095-C) that will be used to comply with the requirements. The forms are not yet final, but the drafts can be accessed at: [irs.gov/draftforms](http://irs.gov/draftforms).

The forms are not due until early 2016, but will include information from the 2015 calendar year. As a result, applicable large employers should take steps now to implement a system for tracking the information that must be provided. This memorandum provides an overview of the reporting requirements.

### Annual Information Returns

The annual information return is a packet of documents consisting of individual forms for each full-time employee (Form 1095-C) and a transmittal form (Form 1094-C). The form for

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<sup>1</sup> For the 2015 calendar year, certain employers (public and private) with between 50 and 100 employees are exempt from the shared responsibility provisions, but still must comply with the reporting requirements. As part of this transition relief, the employers must also certify that they meet the criteria for the exemption.

each employee must include the following information:

1. The applicable large employer's name, address and employer identification number ("EIN");
2. The name, address and telephone number of the applicable large employer's contact person;
3. The calendar year for which the information is reported;
4. A certification, by calendar month, as to whether the applicable large employer offered to its full-time employees (and their dependents) the opportunity to enroll in "minimum essential coverage" pursuant to an eligible employer-sponsored plan;
5. The months during the calendar year for which minimum essential coverage was available pursuant to the plan;
6. Each full-time employee's share, by calendar month, of the lowest cost monthly premium for individual coverage providing "minimum value" offered to him/her pursuant to an eligible employer-sponsored plan;
7. The number of full-time employees employed in each month of the calendar year;
8. The name, address, and taxpayer identification number ("TIN") of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the employer-sponsored plan; and
9. Any other information specified in forms, instructions or published guidance.

The annual information return must be filed on or before February 28 (March 31, if filed electronically) of the year following the calendar year to which it relates. The first filing, which will contain information for the 2015 calendar year, will be due on February 29, 2016 (February 28, 2016 being a Sunday), or March 31, 2016, if filed electronically. Employers filing 250 or more returns must file electronically.

#### Annual Employee Statements

Each full-time employee must be provided with an annual employee statement providing the name, address and EIN of the applicable large employer as well as the information on the Form 1095-C that relates to that particular employee. This requirement can be satisfied by giving the full-time employee a copy of the Form 1095-C or by furnishing a statement that includes the same information and complies with the applicable regulations.

Each full-time employee must receive his/her annual employee statement on or before January 31 of the year following the calendar year to which it relates. The first employee

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statements; *i.e.*, those relating to the 2015 calendar year, must be furnished by no later than February 1, 2016 (January 31, 2016 being a Sunday). The statements can be furnished electronically, provided that the employer complies with the same rules currently in place for providing W-2 forms by electronic means.

### Alternative Information Reporting Methods

The regulations provide for alternative reporting methods reducing the amount of paperwork that an applicable large employer must submit.

1. *Reporting Based on Certification of Qualifying Offers*: This method allows an applicable large employer to submit a simplified return for full-time employees to whom the employer made a qualifying offer of coverage for all months of the calendar year. “Qualifying offer” means that the employer offered minimum essential coverage providing minimum value to the employee, his/her spouse and his/her dependents and the cost for the employee-only coverage did not exceed 9.5% of the Federal poverty line.<sup>2</sup> For these employees, the employer can certify that a qualifying offer was made for the entire year, rather than report monthly eligibility and cost information.<sup>3</sup>

For 2015 only, an applicable large employer can use this method for employees to whom a qualifying offer was made for less than 12 months of the year, if the employer offered coverage to at least 95% of its full-time employees.

2. *Reporting without Separate Identification of Full-Time Employees (98% offers)*: An even more simplified method is available to an applicable large employer certifying that it offered to at least 98% of its employees (full-time and part-time) affordable coverage providing minimum value.<sup>4</sup> The employer need not identify on the annual statement whether the employee was “full-time.” If the employer is later contacted by the IRS to determine whether it owes a penalty for failing to offer affordable coverage providing minimum value to a particular employee, the employer could then determine whether the employee was full-time and provide the information to the IRS. As a result, even though this method is less burdensome, it carries some risk.

### Penalties

Pursuant to the Internal Revenue Code of 1986, as amended (“the IRC”), an applicable large employer may be subject to a penalty if it fails to comply with the reporting requirements. In general, the penalty is \$100 for any failure to file with the IRS an information return or any failure to file a correct information return, with the total annual penalty capped at \$1,500,000. In

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<sup>2</sup> The W-2 and rate of pay safe harbor methods for determining affordability may not be used.

<sup>3</sup> An employer that takes advantage of the transition relief allowing delayed dependent coverage for 2015 may not use this alternative reporting method.

<sup>4</sup> Any safe harbor method can be used to determine whether the coverage offered was affordable.

addition, in general, the penalty is \$100 for any failure to provide an annual payee statement to full-time employees or any failure to include correct information on a payee statement, with the total annual penalty capped at \$1,500,000. For the 2015 calendar year reporting, a penalty will not be imposed on an applicable large employer that files an information return or furnishes an employee statement with incorrect or incomplete information if the employer demonstrates that it made a good faith effort to comply with the requirements. The relief is not available for failure to timely file the annual information return or an employee statement.

However, pursuant to the IRC's general information reporting rules and related Treasury Regulations, an employer that fails to timely file a correct information return or fails to timely furnish a correct payee statement may be eligible for relief from the penalties if it can demonstrate that the failure was due to reasonable cause and not due to willful neglect. The penalty may be waived for reasonable cause if the employer demonstrates that there are significant mitigating factors with respect to the failure or the failure arose from events beyond the employer's control. Significant mitigating factors include, for example, the employer's established history of complying with the information reporting requirements. Events beyond the filer's control include, among other things, the death, serious illness or unavoidable absence of the person with sole responsibility for filing the return or furnishing the payee statement; the unavailability of relevant business records due to a fire, casualty, natural disaster or other disturbance; reasonable reliance on erroneous written advice from the IRS; failure of the employee to provide information necessary for the employer to comply with the information reporting requirements; or the provision of incorrect information by the employee that the employer relied upon in good faith. At this time, it is unclear which of these events the IRS will accept with regard to failures in ACA employer reporting.

Please contact us if you have any questions about or require assistance with the ACA employer reporting requirements.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.

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