

EMPLOYEE BENEFIT ALERT



DECEMBER 9, 2021

2021 Employer Reporting Update- Permanent Extension to Provide Employee Forms and End of Transition Relief for Reporting Errors

The IRS has released the 2021 Forms 1094 and 1095, and proposed regulations that permanently change the deadline for employers to provide copies of the Form 1095 to employees. The proposed rules also eliminate the IRS's "good faith" penalty relief for reporting errors, making accurate reporting more important than ever.

2021 FINAL FORMS 1094 AND 1095 RELEASED

The final forms contain very few changes from prior years. However, reference to relief for reporting errors has been removed from the instructions (see more below). The Form 1095-C also contains two new codes for employers who sponsor an individual coverage health reimbursement arrangement (ICHRA).

PERMANENT EXTENDED DEADLINE FOR DISTRIBUTING FORM 1095S TO INDIVIDUALS

Employer reporting rules require that employers provide a copy of the Form 1095 to employees and participants by January 31st. However, for the last few years the IRS has offered a 30-day extension to that deadline. The proposed rules make this 30-day extension permanent. For 2021 calendar year reporting, statements must be provided to participants by March 2, 2022.

NOTE: The due dates for filing Form 1094 and Form 1095 returns with the IRS have NOT been extended. For 2021 reporting, the deadline to file Form 1094 and Form 1095s

with the IRS is February 28, 2022 for paper filers, and March 31, 2022 for those who file electronically.

In addition, employers required to comply with state individual mandate employer reporting requirements may face earlier deadlines. Currently, four states (CA, MA, NJ, RI) and Wash. D.C. have coverage reporting requirements.

END OF PENALTY RELIEF FOR REPORTING ERRORS

In previous years, the IRS had provided some relief from reporting penalties for errors or missing information. This relief was only available if the employer filed timely and could show it made good faith efforts to comply with information reporting requirements. The IRS makes it clear in the proposed rules that this "good faith relief" is no longer available beginning with reporting for the 2021 calendar year.

The IRS may impose penalties of up to \$280 per form for providing a participant with an inaccurate or incomplete form. A separate \$280 per form penalty could be applied for the same mistake in the forms filed with the IRS, potentially triggering a penalty of up to \$560 per employee.

PERMANENT RELIEF FOR \$6055 STATEMENT DELIVERY (PRIMARY FORM 1095-B)

Generally, it is only applicable large employers (ALE) who are required to provide Form 1095s to participants.

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However, some small employers who do not qualify as an ALE, but who offer self-insured health benefits, are also required to report. These employers can use the form 1095-B. The IRS is allowing carriers and small self-funded employers completing Form 1095-Bs to post a notice by March 2, 2022 prominently on a website or employer intranet. The post must state that individuals may receive a copy of their Form 1095 upon request and provide information on how to obtain their copy.

SUMMARY

The permanent extension for providing forms to employees and participants is good news. However, the end of good faith relief from reporting error penalties means employers must take extra care this year to make sure forms are accurate and complete.

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