

## Compliance Corner

January 23, 2018

### Health Care Reform

#### **IRS Issues 2017 Form 8941, Credit for Small Employer Health Insurance Premiums**

The IRS recently issued the 2017 version of the Form 8941, Credit for Small Employer Health Insurance Premiums, and the related Instructions. Form 8941 is used by small employers to calculate and claim the small business health care tax credit.

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### Federal Health Updates

#### **IRS Publishes Updated Versions of Publications 502 and 503 and Form 2441 (Including Instructions)**

The IRS recently released the updated versions of Publications 502 (Medical and Dental Expenses) and 503 (Child and Dependent Care Expenses), as well as Form 2441 (Child and Dependent Care Expenses) and the related Instructions. The publications and forms have been updated for use in preparing taxpayers' 2017 federal income tax returns.

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#### **HHS Issues Report on Mental Health Parity Enforcement**

In December 2017, HHS released a report on its enforcement of the mental health parity laws. As background, the Mental Health Parity and Addiction Equity Act (MHPAEA) requires that the financial requirements and treatment limitations imposed on mental health and substance use disorder (MH/SUD) benefits be no more restrictive than the

### Announcements

#### **Cadillac Tax and Health Insurance Tax Pushed Back**

Late Monday evening, Jan. 22, Pres. Trump signed H.R.195 into law to end the government shutdown and fund the government through Feb. 8, 2018. The bill passed the House with a 266-159 vote and the Senate with an 81-18 vote.

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#### **Check Out Our Latest Benefits Compliance Podcast Episode on Soundcloud**

Every other week, NFP's legal experts make the subject of compliance personal for a wide audience. By breaking down the daunting details of emerging policies and bridging the gap between legislation and what it means for the listener, Chase Cannon and Suzanne Spradley make compliance issues relatable and relevant. [Visit our Soundcloud page](#) every two weeks for the most up-to-date episode.

#### **This Week's Podcast: Podcast Episode 22: D.C. Court Decision on EEOC's ADA and GINA Wellness Regulations**

In Episode 22, Chase Cannon and Suzanne Spradley break down the U.S. District Court for the District of

predominant financial requirements and treatment limitations that apply to substantially all medical and surgical benefits. MHPAEA also imposes several disclosure requirements on group health plans and health insurance issuers.

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## **DOL Disability Claim Regulations Become Effective April 1, 2018**

On Jan. 5, 2018, the DOL issued a news release that sets the applicability date for the final disability claim regulations. In order to allow stakeholders more time to submit comments, the DOL delayed the originally scheduled applicability date by 90 days, which moved it up from Jan. 1, 2018 to April 1, 2018.

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## **Retirement Updates**

### **IRS Releases Form 8955 Instructions »**

On Dec. 28, 2017, the IRS published 2017 instructions related to Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*. As background, Form 8955-SSA is used to report information about participants who separated from service during the plan year and are entitled to deferred vested benefits under the retirement plan.

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### **Ninth Circuit Dismisses HP Stock Drop Case**

On Jan. 9, 2018, in an unpublished opinion, the U.S. Court of Appeals for the Ninth Circuit dismissed a class action suit filed against Hewlett-Packard (HP). As background, the plaintiffs in *Laffen v. Hewlett-Packard Co.* alleged that HP fiduciaries had breached their fiduciary duties by allowing plan participants to buy and hold HP stock that was artificially inflated. The plaintiffs specifically alleged that HP should have discontinued offering HP stock in the plan or should have at least warned participants of the risks associated with investing in HP stock. After the case was dismissed by the district court, the plaintiffs appealed that decision to the Ninth Circuit.

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### **IRS Updates Procedures for Letter Rulings, Determination Letters and Other Guidance**

On Jan. 2, 2018, the IRS released Bulletin 2018-1 which

Columbia's decision to vacate the EEOC's wellness program regulations, which relate to the ADA and GINA and their impact on rewards offered under employer wellness programs. The two provide an overview of the regulations, the types of wellness programs to which the ADA and GINA might apply, the challenge to the EEOC's rules that led to the lawsuit, and the court's ruling on the matter. Chase also prognosticates over what the ruling could mean for the EEOC, which must now regroup and publish new regulations within a year (or risk having the current regulations invalidated). The two conclude the episode with a recap of what it all means for employers and wellness programs in 2018 and beyond.

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## **February Webinar Series – Register Now**

NFP's Benefits Compliance team is hosting its next series of webinars in February. Training dates are Feb. 14, Feb. 21 and Feb. 28, 2018, at 3:00 p.m. ET. The respective topics are "Love Your HSA: The Good, the Bad and the Ugly of HSA Compliance," "To Be or Not to Be: Compliance Differences Between Fully Insured and Self-Funded Plans" and "2017 Went Out with a Bang: Tax Reform, 226-J Letters and Proposed Changes to the ACA."

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## **Reminder: Form W-2 Cost of Coverage Reporting**

Under the ACA, large employers must report the cost of group health coverage provided to employees on the Form W-2. The requirement applies to employers that filed 250 or more Forms W-2 for 2016. Employer

contains Revenue Procedures 2018-1 and 2018-4, both of which provide guidance related to employee benefit plans.

First, Rev. Proc. 2018-1 updates the procedures to determine employment status on Form SS-8 electronically. As background, employers file Form SS-8 to request a determination of the status of a worker under the common law rules for purposes of federal employment taxes and income tax withholding. Rev. Proc. 2018-1 also clarifies the rules regarding user fee refunds and amounts that must be paid when eligibility for a reduced fee depends on the result of the ruling. Further, the procedure says that [www.pay.gov](http://www.pay.gov) has become the exclusive means for paying fees that are required by this revenue procedure.

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aggregation rules do not apply for this purpose. In other words, the number of Forms W-2 is calculated separately without consideration of controlled groups. Indian tribes, self-funded church plans and employers contributing to a multiemployer plan are exempt from the Form W-2 reporting requirement.

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## Reminder: Upcoming IRC 6055 and 6056 Reporting Deadlines

Applicable large employers (ALEs — those with 50 or more full-time employees including equivalents, or FTEs) in 2016 must comply with IRC Section 6056 reporting in early 2018. Specifically, ALEs must complete and distribute a Form 1095-C to full-time employees by March 2, 2018 (the IRS changed this from Jan. 31, 2018). The form should detail whether the employee was offered minimum value, affordable coverage during 2017. The forms may be mailed, electronically delivered or delivered by hand (although proof of delivery in some manner is recommended).

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## State and Territory Updates

Maryland  
[Read Update »](#)

New Jersey  
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## FAQ

If an employer has been a small employer but has recently increased the number of employees, when will the employer become subject to the employer mandate and Section 6056 reporting?

[Read the Answer »](#)

## Reference

Commonly Used Acronyms

[Glossary »](#)