



Employers Could Face Scrutiny, Including From Immigration And Customs Enforcement, If They Cannot Produce Valid Social Security Numbers On 1095-C Health Insurance Forms For ACA

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In 2016, employers subject to the Affordable Care Act's (ACA) annual information reporting requirements under Code Sections 6055 and 6056 were required, for the first time, to distribute Form 1095-C reports to their full-time employees and file those same reports with the Internal Revenue Service (IRS). Form 1095-Cs were due to affected employees by March 31, 2016 and were due to be filed with the IRS by May 31, 2016 (if filed by paper) or June 30, 2016 (if filed electronically). Form 1095-C reports are designed to show the IRS, among other things, whether health coverage was offered to employees by the employer. The name and Social Security number (SSN) of each employee who was offered health coverage must be listed on the Form 1095-C. As an unintended consequence of this process, following the submission of these reports to the IRS, some employers are discovering that they may not have valid SSNs for all of their employees because they are receiving notification from the IRS that the form has been "accepted with errors." This notification means that the IRS accepted the filing of the Form 1095-Cs, but that errors exist on the form which must be corrected. If the errors are significant or extensive enough, the Form 1095-Cs might ultimately be "rejected" by the IRS for ACA purposes.

Now that the IRS is checking the validity of the SSNs reported on Form 1095-C, employers will face an obligation to take affirmative steps to obtain

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valid SSNs from affected employees. The IRS requires that employers correct ACA reporting forms "as soon as possible." Generally, the IRS will issue monetary penalties for late or incorrect forms, up to \$250 per form, with total penalties capped at \$3 million. However, if an employer can show that it made a good faith effort to comply with the reporting obligations (which includes attempting to obtain valid SSNs from employees and correcting any mistakes on the forms), the employer may avoid the penalties. Further complicating the issue, if the affected employees are part of a bargaining unit, the employer's efforts to collect valid SSNs may need to be discussed with a representative of the union in order to avoid "failure to bargain" unfair labor practice charges. Ultimately, it is possible that the IRS could share its findings with other government agencies, including, but not limited to, U.S. Immigration and Customs Enforcement (ICE), possibly triggering investigative action by those agencies. Any employer who has discovered that it has invalid or missing SSNs, or who suspects that it may have that issue with its ACA reporting forms, should contact counsel to develop a coordinated approach between employment, labor, immigration, and benefits teams to meet the related obligations to collect and use valid SSNs.