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ACA Reporting and Filing: What You Need to Know for 2019

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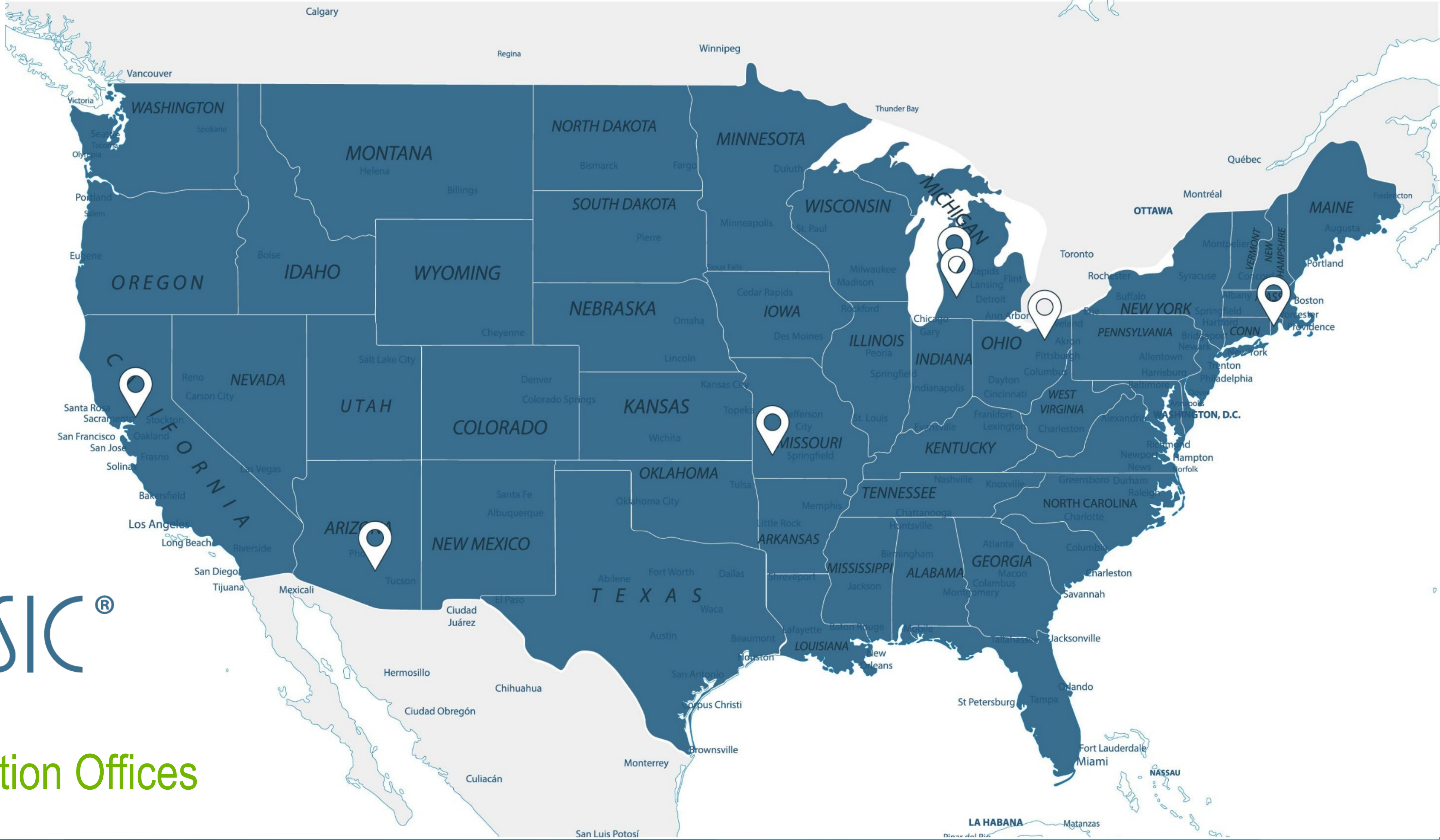

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Presenter

Mary V. Bauman

Mary V. Bauman is an attorney at Miller Johnson in Grand Rapids, MI. She works with employers in establishing, amending, and terminating employee benefit plans of all types. She often plays a consulting role to help the employer strategize ways to better control plan costs and achieve human resources objectives in connection with a plan. In addition, she represents several clients who perform various aspects of employee benefit administration. Ms. Bauman is the chair of the firm’s employee benefits and executive compensation practice group, and health care reform team.

Update on 1094-C and 1095-C Filing

- Employers using the AIR system to electronically file their 1095-Cs have been frustrated with the error reports that do not explain whether the error relates to an employee's SSN or dependent's SSN
- Going forward the IRS will now indicate whether it is an employee or a dependent error but this still creates an issue and situations of multiple dependents on the 1095-C

Update on 1094-C and 1095-C Filing

- In August 2019 IRS issued some information regarding electronic forms for 2019
- However, neither hard copy forms or instructions for 2019 have been released
- Speculation for the delay is due to the discontinuation of the individual mandate penalty for 2019 and how that should impact reporting
- Other changes in forms not expected

Reminders From Prior Year Forms

- Conditional offer to spouse
  - If spouse's offer of coverage is conditioned on not being eligible for other employer coverage, two new indicator codes for Line 14
  - If rely on qualifying offer in Line 14 can leave Line 16 blank or complete

Reminders From Prior Year Forms

COBRA

- If FT employee terminates during the year and is offered COBRA, whether elected or not, reported for remaining months on 1095-C as no offer (Line 14-1H) and not employed (Line 16-2A)
- If terminate during month, use 2B on Line 16 for month of termination
- If reduction in hours and offered COBRA, complete Line 14 on 1095-C based on who is offered coverage (employee and only enrolled dependent(s))

Affordability

- There are 3 safe harbor methods for measuring for affordability (Box 1 W-2, rate of pay and federal poverty line)
- Coverage must be affordable to avoid employer pay or play penalties
- To be affordable, the premium cost for single employee coverage under the employer’s cheapest medical option providing minimum value must be no more than 9.5% of the amount determined under one of the three safe harbors

Affordability

- The 9.5% figure is adjusted annually for changes in the cost of living
- The percentage does not necessarily go up annually

Year	Percentage
2015	9.56%
2016	9.66%
2017	9.69%
2018	9.56%
2019	9.86%
2020	9.78%

Affordability

- The IRS previously indicated that employers who provide additional compensation to employees who opt out of group health coverage may be required to include that amount when measuring for affordability for pay or play penalty purposes

Affordability

Under most recent guidance the IRS says:

- This rule will not apply for opt-out arrangements in effect on or before December 16, 2015
- In addition, this rule will not apply to opt out arrangements which require employees to provide reasonable evidence that the employee, spouse and dependents have other group health coverage for period during which coverage is being waived

Reporting Penalties

- IRS can assess $270 penalty per return for late, incomplete or incorrect forms
- IRS granted relief for incomplete or incorrect returns for prior years if good faith effort
- IRS has <u>not</u> indicated it will extend good faith relief to 2019 reporting (due in first quarter of 2020)

Correcting Forms

IRS expects a corrected 1095-C to be prepared and furnished/filed for any of the following errors:

- Individual's name or Social Security Number
- Employer's EIN
- Indicator code in Lines 14 or 16
- Cost in Line 15
- Information about enrollees in Part III (where self-funded)

Correcting Forms

If incorrect 1095-C has not already been filed with IRS:

- Prepare corrected form
- Write "corrected" on top
- Redistribute to employee
- File with IRS by the deadline
- Original incorrect Form 1095-C is not filed

Correcting Forms

If incorrect 1095-C <u>was</u> filed with the IRS:

- Prepare corrected form
- Enter "X" in corrected check box
- Redistribute to employee
- File all corrected 1095-Cs with IRS along with 1094-C transmittal form
  - Do not check corrected check box on 1094-C
  - Do not check as authoritative transmittal and complete only Part I of 1094-C

Correcting Forms

IRS expects a corrected 1094-C to be prepared and filed for any of the following errors:

- Employer's name or EIN
- Number of 1095-Cs filed
- Information regarding ALE group
- Line 22 relief
- Any column of Part III except total employee headcount

Correcting Forms

If incorrect 1094-C was filed with IRS:

- Prepare corrected form (all parts)
- Enter “X” in corrected check box
- Mark as authoritative transmittal
- Do not include 1095-Cs
- File with IRS

Deadline Reminder

- 1095-Cs must be distributed to employees by the first business day on or after January 31
- The 1094-C and 1095-Cs must be filed with the IRS
  - By the first business day on or after February 28 if filing by mail
  - By the first business day on or after March 31 if filing electronically
- IRS not expected to grant delayed deadlines as was the case for prior year reporting

Deadline Reminder

- Employers can file for an automatic 30-day extension for filing the 1094-C and 1095-Cs with the IRS
- But the extension doesn't apply to the employee distribution deadline

IRS Enforcement of Pay or Play Penalty – Letter 226J

- The IRS began to issue notices of proposed assessments in November 2017 with respect to calendar year 2015
- 2015 was the first year the pay or play penalty applied to large employers
- The notice is known as IRS Letter 226J
- The IRS appears to be done with 2015 and 2016 enforcement and is currently issuing 226Js regarding 2017

IRS Enforcement of Pay or Play Penalty – Letter 226J

- The notices focus on compliance with the “a” penalty ($2,000 x all FTEs – the first 30) and whether the employer offered coverage to at least 70% of all full-time employees in 2015
- The 70% threshold increased to 95% for 2016 and later years

IRS Enforcement of Pay or Play Penalty – Letter 226J

- The IRS notice will list one or more employees who went to the exchange and received a premium tax credit, triggering the penalty
- If the “a” penalty does not apply, the employer can still be subject to the “b” penalty ($3,000 for each full-time employee who was not offered affordable, minimum value coverage and who received a premium tax credit)

IRS Enforcement of Pay or Play Penalty – Letter 226J

- "a" and "b" penalties are adjusted annually for cost-of-living changes

	"a" Penalty	"b" Penalty
2015	$2,080	$3,120
2016	$2,160	$3,240
2017	$2,260	$3,390
2018	$2,320	$3,480
2019	$2,500	$3,750
2020	$2,570	$3,860

IRS Enforcement of Pay or Play Penalty – Letter 226J

- In most cases, the employers who are receiving the notices appear to have inaccurately completed their IRS Form 1094-C transmittal form regarding whether the employer offered coverage to at least 70% of its full-time employees

IRS Enforcement of Pay or Play Penalty – Letter 226J

What should you do if you receive such a letter?

- Respond promptly – 30 days
- Respond thoroughly – if coverage was offered to at least 70% of the full-time employees, explain that the 1094-C was completed in error and assert no "a" penalty applies

IRS Enforcement of Pay or Play Penalty – Letter 226J

For employees reported as receiving a premium tax credit, also explain that the “b” penalty should not apply if the employee was:

- Part-time,
- Not employed,
- In a waiting period, or
- Offered affordable, minimum value coverage

IRS Enforcement of Pay or Play Penalty – Letter 226J

- Employers have been successful if they fully respond to the IRS and have facts to back up their position
- The details are <u>not</u> required to be included in the response but must be maintained by the employer to show to the IRS in the event of an audit

IRS Enforcement of Pay or Play Penalty – Letter 226J

- Employers should review their 2017 and 2018 Forms 1094-C and 1095-C to confirm accurate
- If the forms are not accurate, they should correct and refile now
- The IRS is likely not to be as accommodating in the next round

ACA Legislative Update

The penalty for violating the ACA's individual mandate was reduced to $0 effective January 1, 2019

- The individual mandate was <u>not</u> repealed
- The reduction in the penalty has no <u>direct</u> impact on group health plans
- The reduction does <u>not</u> affect the employer mandate (aka the pay or play penalty)

Proposed Legislation

- The big unanswered question is what other changes to the ACA and health benefits can we expect going forward?
- Several bills are pending in Congress
- Whether the bills will pass, particularly in an election year, is probably unlikely

Proposed Legislation

The changes can be grouped into the following general areas:

- Repeal ACA employer pay or play penalty in whole or in part
- Simplify pay or play reporting
- Further delay ACA Cadillac tax from 2022 to 2023
- Changes to make HSAs and FSAs more attractive

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