



**5 HR COMPLIANCE
RESOLUTIONS FOR
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HEALTHCARE ALERT



5 HR Compliance Resolutions for 2017

The new year is a great time to take stock of your company's compliance with important federal, state, and local labor law requirements. Keep these resolutions in mind to help start your company off right in 2017:

1. **Give your poster wall a thorough check-up.** Make sure all of your workplace posters are up-to-date and the correct size. Check with your [state labor department](#) for any industry-specific poster requirements that may apply to your business. Note that certain localities may also have posting requirements.

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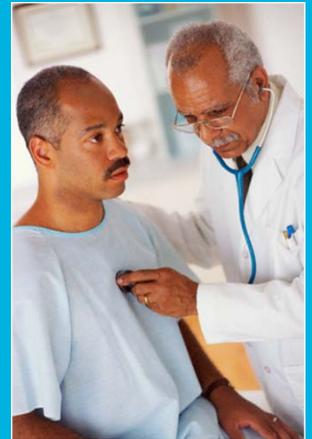
2. **Stay on top of notice requirements.** From summary plan descriptions (SPDs), to COBRA- and FMLA-related notices, employers are required under various laws to provide employees with certain information about their benefits and responsibilities. Confirm that your employee communications are accurate, consistent, and in compliance with applicable law.
3. **Keep up with recordkeeping.** In addition to being a good business practice, employers are required to maintain certain types of employee records in order to comply with applicable law. Verify that your recordkeeping procedures address any requirements related to confidentiality and how long to keep records.
4. **Review policies and procedures.** Be sure your company policies and procedures comply with applicable labor laws related to employee leave, equal employment opportunity, sexual harassment, worker safety, and other requirements.
5. **Confirm that your workers are classified properly.** Misclassifying employees as [independent contractors](#) can result in costly legal consequences. Also remember that an employee's [exempt or nonexempt](#) status is based on his or her compensation and specific job duties. It is a good idea to review job descriptions on a regular basis (at least annually) as well, as tasks and requirements may change. However, neither job titles nor job descriptions determine the exempt or nonexempt status of an employee.

IRS Updates Health Care Reform FAQs

Updated Guidance Now Available

The Internal Revenue Service (IRS) has [updated](#) 3 sets of FAQs related to Health Care Reform. The updated resources are described below.

- **Questions and Answers about Information Reporting by Employers on Form 1094-C and Form 1095-C.** These FAQs provide additional information about completing Form 1094-C and Form 1095-C for calendar year 2016 that are to be filed in 2017. The FAQs may be used in conjunction with the [Instructions for Forms 1094-C and 1095-C](#), which provide detailed information about completing the forms. [Click here](#) to read the revised FAQs.
- **Questions and Answers on Reporting of Offers of Health Insurance Coverage by Employers (Section 6056).** [Certain employers](#) are required to report to the IRS information about whether they offered health coverage to their employees and, if so, information



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about the coverage offered. This information also must be provided to employees. These updated [FAQs](#) address these reporting requirements.

- **Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act.** The Affordable Care Act added the employer shared responsibility ("pay or play") provisions under section 4980H of the Internal Revenue Code. These revised [FAQs](#) provide answers to frequently asked questions about the "pay or play" provisions.

Employers may visit the IRS's [Affordable Care Act Tax Provisions for Employers](#) page for additional guidance.

OSHA Releases Final Rule Regarding Employer Recordkeeping Obligations

Final Rule Effective January 18, 2017

The US Occupational Safety and Health Administration (OSHA) has issued a [final rule](#), effective January 18, 2017, that clarifies an employer's continuing obligation to make and maintain an accurate record of each employee recordable injury and illness.

Background

OSHA's [recordkeeping regulations](#) require employers to record information about certain work-related injuries and illnesses on an [OSHA 300 Log](#). Employers must enter each recordable injury or illness on the OSHA 300 Log, as well as on a supplementary [OSHA 301 Incident Report](#), within 7 calendar days of [receiving information](#) that a recordable injury or illness has occurred. At the end of each calendar year, employers must create, certify, and post annual summaries of the cases listed on their 300 Logs for the prior calendar year. Generally, employers **must retain** their OSHA Logs, Incident Reports, and annual summaries for **5 years** following the end of the calendar year that they cover.



If an employer **initially fails to record** a recordable injury or illness on the OSHA 300 Log or the corresponding OSHA 301 Incident Report, the employer still has an ongoing duty to record that case; as long as an employer fails to comply with the ongoing recording duty, there exists an ongoing violation of OSHA's recordkeeping requirements. OSHA can cite employers for such recordkeeping violations **for up to 6 months** after the 5-year retention period expires.

Final Rule Clarifies Continuing Obligation

The final rule clarifies that if an employer fails to record an injury or illness within 7 days, **the obligation to record continues on past the 7th day, such that each successive day where the injury or illness remains unrecorded constitutes a continuing "occurrence" of the ongoing violation.** If the employer records the

injury on some later day than the 7th day, the violation ceases to occur at that point, and any citation would need to be issued within 6 months of the cessation of the violation.

The final rule clarifies that **an employer cannot avoid the 5-year maintenance requirement by failing to make the record in the initial 7 days**; rather, the obligation to make the record, **for both the OSHA 300 Log as well as the OSHA 301 Incident Report**, continues throughout the 5-year maintenance period even if the employer fails to meet its initial obligation.

Note: The amendments in the final rule add no new compliance obligations and do not require employers to make records of any injuries or illnesses for which records are not already required.

The final rule becomes effective January 18, 2017. To read the text of the final rule, please [click here](#).

IRS: "Saver's Credit" Helps Low- and Moderate-Income Workers Save for Retirement

Special Tax Credit Available for Certain Workers

The [Internal Revenue Service](#) (IRS) is reminding low- and moderate-income workers that they can take steps now to save for retirement and earn a special tax credit in 2016 and years ahead.

Background

The **saver's credit, also known as the retirement savings contribution credit**, helps offset part of the first \$2,000 workers voluntarily contribute to IRAs and 401(k) plans and similar workplace retirement programs. The saver's credit can be claimed by:

- **Married couples filing jointly** with incomes up to \$61,500 in 2016 or \$62,000 in 2017;
- **Heads of household** with incomes up to \$46,125 in 2016 or \$46,500 in 2017; and
- **Married individuals filing separately** and **singles** with incomes up to \$30,750 in 2016 or \$31,000 in 2017.



Note: Like other tax credits, the saver's credit can increase a taxpayer's refund or reduce the tax owed. Though the maximum saver's credit is **\$1,000** (\$2,000 for married couples), the IRS cautioned that it is often much less and, due in part to the impact of other deductions and credits, may, in fact, be zero for some taxpayers.

Saver's Credit

A taxpayer's credit amount is based on his or her **filing status, adjusted gross income, tax liability, and amount contributed** to qualifying retirement programs.

IRS [Form 8880](#) is used to claim the saver's credit, and its instructions have details on figuring the credit correctly.

Eligible workers still have time to make qualifying retirement contributions and get the saver's credit on their 2016 tax returns. People have until the due date for filing their 2016 return (April 18, 2017), to set up a new individual retirement arrangement or add money to an existing IRA for 2016. This includes the Treasury Department's [myRA](#). However, elective deferrals (contributions) must be made by the end of the year to a 401(k) plan or similar workplace program (e.g., a 403(b) plan).

Other special rules apply to the saver's credit. [Click here](#) and scroll to the bottom for more information.



2018 Cost-Sharing Limits Released

HHS Issues Final Notice of Benefit and Payment Parameters for 2018

A [final Notice of Benefit and Payment Parameters](#) from the US Department of Health and Human Services (HHS) addresses, among other things, the requirement under the Affordable Care Act that non-grandfathered group health plans limit annual out-of-pocket cost-sharing for coverage of [essential health benefits](#) under the plan. The law requires that these limits be updated annually.

HHS updated the annual limits based on the premium adjustment percentage for 2018. As a result, annual out-of-pocket expenses may not exceed **\$7,350 for self-only coverage** or **\$14,700 for family coverage in 2018**.

2018 Individual Mandate Required Contribution Percentage Released

Certain Special Enrollment Periods Also Codified

The US Department of Health and Human Services (HHS) has released a final rule which establishes the required contribution percentage under the individual mandate for 2018 and codifies certain special enrollment periods.

2018 Required Contribution Percentage

The Affordable Care Act's "[individual mandate](#)" provision requires every individual to have minimum essential coverage for each month, qualify for an exemption, or make a penalty payment when filing his or her federal income tax return. One such exemption applies when the amount that an individual would be required to pay for minimum essential coverage (the required contribution) exceeds a particular percentage of his or her actual household income for a taxable year (**the required contribution percentage**).

Under the final rule, the required contribution percentage under the individual mandate for 2018 is **8.05%**, a decrease from 8.16% for 2017.

Special Enrollment Periods

In addition, HHS codified special enrollment periods for the following consumers who apply for coverage on the Health Insurance Marketplace (among others):



- Individuals and their dependents who apply for coverage and are later determined to be ineligible for Medicaid or CHIP;
- Individuals who resolve a [data matching issue](#) following the expiration of an inconsistency period; and
- Victims of domestic abuse or spousal abandonment and their dependents who seek to apply for coverage apart from the perpetrator of the abuse or abandonment.

While these special enrollment periods have previously been available to consumers, the agency sought codification in order to ensure the rules are clear and to limit potential abuse. [Click here](#) to read the final rule in its entirety.

DOL Issues Employee Misclassification Website

Website Provides Information on Employee and Independent Contractor Classification

The US Department of Labor (DOL) has [announced](#) the creation of a [website](#) where workers, employers, and government agencies can find information and resources relating to the **misclassification of employees** as independent contractors.

The new DOL website provides a series of links to specific misclassification topics. The website links to the following topics (among others):

- Pay and Misclassification
- Health and Safety Concerns on the Job
- Unemployment Insurance and Misclassification
- Anti-Retaliation/Anti-Discrimination Rights for Workers
- Federal Taxes and Misclassification
- Health Care and Retirement Benefits - Information on Employer-Sponsored Benefit Plans
- Resources for State and Federal Governments

Resources, including outlines, legal information, press releases, studies, and IRS publications, are provided for each topic.

To read the announcement, please [click here](#). The misclassification website can be accessed by [clicking here](#).

State Minimum Wage Rates Set to Increase

The minimum wage will rise in a number of states in 2017. Unless otherwise noted, the following minimum wage rates (per hour) are scheduled to become effective on January 1, 2017:

- **Alaska:** \$9.80
- **Arizona:** \$10.00
- **Arkansas:** \$8.50 for employers with 4 or more employees
- **California:** \$10.50 for employers with 26 or more employees (for smaller employers, the rate remains \$10.00)
- **Colorado:** \$9.30 (\$6.28 for tipped employees)
- **Connecticut:** \$10.10
- **District of Columbia:** \$12.50, beginning July 1, 2017 (\$3.33 for tipped employees)
- **Florida:** \$8.10 (\$5.08 for tipped employees)
- **Hawaii:** \$9.25
- **Maine:** \$9.00, beginning January 7, 2017
- **Maryland:** \$9.25, beginning July 1, 2017
- **Massachusetts:** \$11.00 (\$3.75 for tipped employees)
- **Michigan:** \$8.90 (\$3.38 for tipped employees)
- **Missouri:** \$7.70 (\$3.85 for tipped employees)
- **Montana:** \$8.15
- **New Jersey:** \$8.44
- **New York:** \$9.70, beginning December 31, 2016 (\$11.00 for employers in NYC with 11 or more employees; \$10.50 for employers in NYC with 10 or fewer employees; \$10.00 for Long Island and Westchester; \$10.75 for fast food employees outside of NYC; \$12.00 for fast food employees within NYC)
- **Ohio:** \$8.15 (\$7.25 for employees at certain [smaller companies](#), and for 14- and 15-year olds; the wage rises to \$4.08 for tipped employees)
- **Oregon:** \$10.25, beginning July 1, 2017 (\$11.25 for employees working within the urban growth boundary of a [metropolitan service district](#); \$10.00 in nonurban communities)
- **Rhode Island:** \$3.89 for tipped employees (for non-tipped employees, the \$9.60 minimum wage rate remains unchanged)
- **South Dakota:** \$8.65 (\$4.325 for tipped employees)
- **Vermont:** \$10.00 (\$5.00 for certain service or tipped employees)
- **Washington:** \$11.00



Be sure to comply with any city or other local wage requirements (which may be **higher** than the state or federal minimum wage) that may apply to your business.

Certain Small Employer HRAs Exempt from ACA Market Reforms

A new law allows certain small employers - those with fewer than 50 full-time equivalent employees who do not offer a group health plan - to offer new **"qualified small employer health reimbursement arrangements"** to reimburse employees for qualified medical expenses, including **individual health insurance premiums**, for years **after December 31, 2016**. The law also includes a **notice requirement** for these new HRAs.

Qualified Small Employer HRAs

Qualified small employer health reimbursement arrangements (HRAs) are exempt from the ACA's market reforms. To be considered a qualified small employer HRA, the arrangement generally must:

- Be funded solely by an eligible small employer without salary reduction contributions;
- Provide, after an eligible employee provides **proof of coverage**, for the payment or reimbursement of qualified medical expenses (which generally includes **individual health insurance premiums**) incurred by the employee or his or her family members;
 - Limit annual payments and reimbursements to **\$4,950 per employee or \$10,000 per family** (these amounts are prorated when coverage is for less than the entire year); **and**
 - Be provided on the same terms to all eligible employees.



Note: Large employers and employers who offer a group health plan are not eligible to offer qualified small employer HRAs.

Notice Requirement

An employer funding a qualified small employer HRA for any year must provide a **written notice to each eligible employee** that includes the following information:

- A statement regarding the maximum dollar amount of payments and reimbursements that may be made for the year with respect to the employee (the **"permitted benefit"**);
- A statement that the employee **should provide information regarding his or her permitted** payment of the premium tax credit; **and**
- A statement that if the employee is not covered under minimum essential coverage for any month, the employee may be subject to the individual mandate penalty for such month **and reimbursements under the HRA may be includible in gross income**.

Effective for years beginning after December 31, 2016, the notice generally must be provided **no later than 90 days** before the beginning of the year in which the HRA is funded - or, if an employee is not eligible to participate in the arrangement as of the beginning of such year, the date on which the employee is first eligible.

Key Facts About Information Reporting for Employers and Health Coverage Providers

Overview of the Purpose of Forms 1094 & 1095 and Reporting Deadlines

The information reporting provisions under the Affordable Care Act require **insurers, self-insuring employers, and large employers** to submit information returns to the IRS and individuals reporting on health coverage. The IRS is reminding employers and health coverage providers about the types of forms, the purpose of each, and noteworthy dates.

Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage*

- This [form](#) is filed by [applicable large employers](#) (ALEs), which generally are employers with **50 or more full-time employees**, including full-time equivalents.
- **ALEs with fully insured health coverage** send this form to full-time employees, with information about the coverage offered. (ALEs that do not offer coverage must still send this form to full-time employees.)
- **ALEs with self-insured health coverage** send this form to individuals they cover, with information about who was covered and when.
- This form is submitted to the IRS with [Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns](#).
- The deadline for filing this form with the IRS is **February 28, 2017** (or March 31, 2017 if filing electronically).
- The deadline for furnishing this form to the full-time employee is **March 2, 2017**, which is a 30-day extension from the original due date of January 31.



Form 1095-B, *Health Coverage*

- This [form](#) is filed by [providers of minimum essential coverage](#), including employers that are not ALEs but who offer employer-sponsored self-insured health coverage.
- This form is used to report information to covered individuals about each person enrolled in coverage, and is sent to the person identified as the "responsible individual" on the form.
- This form is submitted to the IRS with [Form 1094-B, Transmittal of Health Coverage Information Returns](#).
- The deadline for filing this form with the IRS is **February 28, 2017** (or March 31, 2017 if filing electronically).

- The deadline for furnishing this form to the responsible individual is **March 2, 2017**, which is a 30-day extension from the original due date of January 31.

Additional Resources

The IRS provides a set of [Q&As](#) on information reporting for self-insuring employers and other providers of minimum essential coverage, as well as a set of [Q&As](#) for ALEs.

New Expiration Date for Employer CHIP, COBRA General, and COBRA Election Notices is December 31, 2019

Model Notices Previously Expired on December 31, 2016

The US Department of Labor (DOL) has extended the effective date of its model [Employer CHIP Notice](#), [General Notice of COBRA Rights](#), and [COBRA Election Notice](#) through **December 31, 2019**. Previously, these model notices expired on December 31, 2016.

No other changes have been made to these notices beyond the expiration date. For the latest guidance regarding these notices, please visit the DOL's [Children's Health Insurance Program Reauthorization Act](#) and [COBRA Continuation Coverage](#) webpages or contact the DOL directly at 1-866-487-2365.

New Generics Released in December

In December 2016, the following new generic medications were released:

- Epipen (epinephrine) for allergic reactions;
- Tamiflu (oseltamivir) for influenza; and
- Zetia (ezetimibe) for high cholesterol.

