

NEW FOR THE NEW 2018 YEAR – EMAC GUIDANCE AND THE TAX CUTS AND JOBS ACT – PLUS ACA REPORTING RELIEF

Health plan related compliance requirements continue for 2018. The Massachusetts Employer Medical Assistance Contribution Supplement (EMAC Supplement) is now in effect. This has been on the radar screen since early last year. In addition, there are changes in the taxation of certain fringe benefits as a result of the federal Tax Cuts and Jobs Act (TCJA), signed by President Trump late last month. But there's still more. The IRS has announced an extension of the deadline to furnish Forms 1095 (B or C) to covered individuals.

ACA REPORTING RELIEF: FORM 1095 REPORTING TO COVERED INDIVIDUALS IS EXTENDED 30 DAYS

Yes, the IRS has issued an automatic, 30-day extension for applicable large employers (ALEs) to furnish 2017 IRS Form 1095 (B and C) to covered individuals. Employers are not required to do anything special to receive the extension as the extension is automatic for all ALEs. As a result, for the 2017 calendar year reporting period, these Forms are now due to individuals on March 2, 2018, rather than January 31, 2018.

Sounds like a good deal, right? Sort of. This 30-day extension does NOT apply to the employer deadline to file those same Forms with the IRS. Accordingly, the deadline to file Form 1094 (B or C) and Forms 1095 (B or C) with the IRS is still on or before February 28th (if filing on paper) or March 31st (if filing electronically). Employers may still apply for a further extension of time under normal extension rules.

Bottom line: Those ALEs filing on paper will still need to have the Forms 1094 and 1095 prepared and ready to file with the IRS on or before February 28th even though the Forms need not be furnished to individuals until three days later, by March 2nd.

THE LATEST EMAC SUPPLEMENT GUIDANCE TO SHARE WITH CLIENTS

On December 18, 2017 the Mass Division of Unemployment Assistance (DUA) released updated EMAC Supplement FAQs and Emergency EMAC Supplement regulations. This guidance implements, and otherwise defines, how DUA will administer the EMAC Supplement. The Emergency EMAC regulations expire on March 8, 2018. The DUA plans to make the emergency regulations permanent and will hold a public hearing in Boston on February 8, 2018.

The EMAC Supplement is a targeted assessment that is 5% of the first \$15,000 in wages paid to an employee receiving MassHealth or subsidized ConnectorCare coverage during the quarter (capped at \$750 per affected employee annually).

Here is the latest EMAC Supplement Guidance.

1. **Employers Subject to the EMAC Supplement**

- Employers, including non-profit and governmental employers, with six or more employees in a calendar quarter may be subject to the EMAC Supplement for the applicable quarter.
 - Only very small employers need to worry about doing the actual calculation to determine six or more – Calculate the number of employees who worked/received wages for any part of the pay period that includes the 12th of month – Add the three monthly “snapshots” from the quarter and divide by three. This three month average will determine if an employer has six or more employees in the quarter.
- Those employers subject to the EMAC Supplement will be assessed for each employee who receives MassHealth or subsidized ConnectorCare in the quarter.
- There is no phase-in of the EMAC Supplement. Once an employer becomes newly subject to EMAC, the EMAC Supplement applies as of the first quarter the employer reaches six or more.

2. **Employees Causing Employer Liability under the EMAC Supplement**

The EMAC Supplement is a tax/revenue assessment based on wages paid and NOT hours worked. Accordingly, employers subject to the EMAC Supplement will be liable for any employee enrolled in MassHealth or ConnectorCare (with a subsidy) regardless of whether the employee is full-time or part-time, or is benefits eligible, or the employer sponsors group health plan coverage, or the employer’s coverage is “affordable” or meets “MCC.”

Exceptions -- Generally, employees enrolled in MassHealth or ConnectorCare (with a subsidy) during the applicable quarter will subject the employer to the EMAC Supplement for that quarter. However, there are exceptions for certain employees:

- Employees earning less than \$500 for the quarter.
- Employees enrolled in MassHealth or ConnectorCare, but not continuously enrolled for a period of at least 56 days (8 weeks) in the quarter.
- Employees participating in the Premium Assistance Program through MassHealth.
- Employees that are permanently and totally disabled as defined by Title XVI of the Social Security Act (supplemental security income, or SSI) or by applicable state law.

3. The Quarterly EMAC Supplement Assessment

DUA determines the quarterly assessment; NOT the employer. The latest DUA guidance describes the assessment process to be used:

- DUA matches the employer’s quarterly wage reports with quarterly records received from MassHealth and the Health Connector and determines which employers owe the assessment and how much each employer owes.
- EMAC Supplement payments owed by the employer will be added to the statement showing the employer’s Unemployment Insurance liability – both assessments will be separately indicated on the statement.
- Quarterly EMAC Supplement assessments are due and payable by the last day of the month following the close of the applicable quarter for which they have been determined.
- After the EMAC Supplement has been assessed by DUA, employers may access information made available by DUA online for each employer. This information will allow employers to review the accuracy of the DUA assessment and/or to appeal that assessment.

THE TAX CUTS AND JOBS ACT (TCJA)

On the federal tax front, some employee fringe benefits have been changed under the TCJA. Even the ACA is affected:

- The TCJA reduces the amount of the ACA’s individual shared responsibility penalty to zero – but the reduction is delayed one year and will not be effective until January 1, 2019.
- The TCJA does not change the employer shared responsibility penalty or the requirement to prepare, furnish and file the Forms 1094 and 1095 series each year.

Here is a brief summary of what non-retirement fringe benefits are affected by the TCJA:

Fringe benefit	Conference Agreement Change
Bicycle commuting benefit	Exclusion from federal income tax (FIT), federal income tax withholding (FITW), Social Security/Medicare (FICA) and federal unemployment insurance (FUTA) is repealed.
Eating facilities – meals furnished for convenience of employer at or near the employer’s business premises	The business deduction is limited to 50% through December 31, 2025 and would be completely disallowed effective January 1, 2026. Value of meals still tax free to the employee.



Employee unreimbursed business expenses	Through December 31, 2025, employees are may no longer able to claim an itemized deduction (subject to the 2% floor) for businesses expenses incurred on behalf of the employer but not reimbursed by the employer.
Employee achievement awards for length of service and safety	Exclusion from wages subject to FIT, FITW, FICA and FUTA permitted subject to conditions and dollar limits.
Entertainment expenses	The business deduction for expenses incurred, or a facility or portion thereof used for these activities, are disallowed, except if treated as W-2 wages to the employee.
Credit for employer paid family and medical leave (for 2017 and 2018)	Allows general business tax credit on wages paid to employees while on FMLA if wages are at least 50% of normal wages and if all FT employees receive 2+ weeks of annual paid FMLA.
Moving expenses	The exclusion from wages subject to FIT, FITW, FICA and FUTA is repealed, except in the case of Armed Forces on active duty, but employer can take business deduction.
Transportation fringe benefits (Parking and transit passes provided for other than the safety of the employee)	The business deduction would be disallowed; however, the exclusion from wages subject to FIT, FITW, FICA and FUTA would continue to apply keeping unaffected employee pretax contribution arrangements for transit and parking benefits.

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