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Final regulations issued by the Internal Revenue Service (“IRS”) expand the requirement to electronically file certain returns and other documents with the IRS. This new requirement will impact employers who file Forms 1094-C, 1095-C, 1094-B and 1095-B. It will take effect for returns due to be filed on or after January 1, 2024.

As a practical effect, all applicable large employers (“ALEs,” employers with at least 50 full-time employees, including equivalent employees) should prepare to file Forms 1094-C and 1095-C electronically with the IRS for calendar year (“CY”) 2023 reporting due March 31, 2024.

In addition, small employers who offer self-funded plans and who are required to file Forms 1094-B and 1095-B in 2024 should prepare for electronic filing of those forms if filing 10 or more Forms.

Background

Prior to the adoption of these final regulations, the IRS rules regarding mandatory electronic filing of information returns or statements were applicable only to organizations issuing more than 250 forms of each type. Thus, for example, an organization that filed 200 Forms W-2 and 175 Forms 1095-C did not have to file the respective forms electronically. These old rules continue to apply through calendar year or fiscal year 2023, as applicable.

What’s New?

Beginning on January 1, 2024 (or for returns related to taxable years ending on or after January 1, 2024), an organization filing 10 or more returns or statements in a calendar year will be required to file electronically.

This requirement extends to the Forms 1094-C, 1095-C, 1094-B and 1095-B, among others.

Importantly, unlike before, the final regulations require filers to aggregate together all forms required to be filed to determine whether a filer meets the 10-return threshold. If, in the aggregate, there are 10 or more forms, the filer would be required to file them electronically. Further, any corrections will need to be filed in the same manner as the original.

The final regulations also clarify that although there is a hardship exception, these exceptions will not be given freely and that there are few “small business” exceptions to the electronic filing rule.

Employer Action

With respect to these new requirements, employers should:

- Review the final rules and determine which forms will need to be filed electronically beginning in 2024. Briefly:
 - All ALEs will need to file Forms 1094-C and 1095-C electronically for CY 2023 filings, due March 31, 2024.
 - Small employers who are not ALEs, but offer a self-funded health plan, will need to file Forms 1094-B and 1095-B electronically with the IRS if filing 10 or more returns (determined in the aggregate). Filings for CY 2023 are due by March 31, 2024.
- Work with payroll vendors and/or third-party vendors to determine the best method of filing the applicable forms electronically to ensure compliance.

