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New Jersey Issues Individual Mandate Reporting Requirements

With no ACA individual mandate penalty in 2019, states are considering taking action to help stabilize their individual health insurance marketplaces. New Jersey and Washington D.C. have implemented individual mandates that, starting in 2019, require residents to obtain coverage or be subject to a penalty.

Volume 42

Issue 33

April 10, 2019

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Background

On December 20, 2017, Congress passed the Tax Cuts and Reform Act of 2017. One of the provisions of this law nullified the individual mandate by making the penalty for failing to purchase health insurance \$0. (See our [December 20, 2017 *Legislate*](#).) Two states and the District of Columbia subsequently enacted individual mandates in reaction to this change — motivated by concern that healthier individuals would drop health insurance coverage absent an individual mandate, and that the remaining “sicker pool” of insureds in the marketplace would cause health insurance premiums to rise.

State (and D.C.) individual mandate legislation

Last year, New Jersey became the second state in the nation (Massachusetts was the first in 2006. See our [January 8, 2008 *For Your Information*](#).) to enact an individual health insurance mandate. Washington, D.C. followed with a similar law later in 2018 requiring residents to have health insurance or pay a penalty. Both laws are effective January 1, 2019, and closely mirror the now-invalidated ACA individual mandate in terms of the amount of the penalty and exemptions from the mandate. Washington, D.C. has not yet provided any guidance on its [DC Health Link](#) website on employer reporting requirements or forms.

Vermont also enacted an individual mandate that will be effective in 2020. The details of how the mandate would operate, including penalties, was left to a working group that has not finalized a recommendation yet. No information is available to date on its ACA exchange website [Vermont Health Connect](#).

New Jersey’s employer reporting requirements

New Jersey provided the following initial guidance on the employer reporting requirements on its “[NJ Health Insurance Mandate](#)” website:

- The State expects that employers will use the current IRS ACA Forms 1095-C, 1094-C, 1095-B and 1094-B for reporting to New Jersey for employees and former employees such as retirees and COBRA beneficiaries enrolled in self-insured coverage. If the IRS discontinues or substantially changes the ACA Forms, New Jersey will use similar forms.
- Employers must file the forms through New Jersey’s W-2 filing system.
- Out-of-state employers that withhold and remit New Jersey Gross Income Tax for New Jersey residents have the same reporting requirements as employers located in New Jersey.
- Filing instructions are expected to be posted in mid-2019.
- 2019 coverage information must be filed electronically by February 15, 2020. The website does not specify a date for providing the forms to employees, but the deadline would presumably be on or before February 15.

Buck Comment. Note that the February 15 filing deadline is earlier than the IRS deadlines for 2018 ACA reporting, which in 2019 were March 4 for furnishing forms to employees and April 1 for filing with the IRS.

Blockquote: ERISA Preemption?

State and local laws that “relate to” or “conflict with” ERISA plans are preempted (trumped) by ERISA. It is not clear whether ERISA would preempt the New Jersey employer reporting requirements. In 2016, the Supreme Court decided that a Vermont law that required employers to report health information to the State was preempted by ERISA (See our [March 11, 2016 For Your Information](#)) — however, the Court may or may not come to a similar conclusion on state individual mandate reporting requirements. Employer reporting requirements have been in place in Massachusetts for its individual mandate requirements for over ten years, but no employer has decided to test the Massachusetts’ requirements in the courts. To learn more about ERISA preemption, please see our [August 20, 2014 FYI In-Depth](#).

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In closing

Employers should monitor the New Jersey, Washington, D.C. and Vermont websites for additional guidance and discuss with their ACA reporting vendor the actions needed to comply with these new requirements. Other states are considering and may implement similar individual mandate requirements in the future.

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