IRS to Accept Tax Returns Lacking Health Care Status: Employer Reporting Unchanged. Employers still must distribute 1095 forms to employees and report employee health coverage to IRS, as deadlines loom - On Feb. 15th, the IRS announced on its ACA Information Center for Tax Professionals webpage that it would not reject taxpayers’ 2016 income tax returns that are missing health coverage information. This information is supposed to be included on line 61 of the Form 1040 and line 11 of the Form 1040EZ to demonstrate compliance during the year with the Affordable Care Act’s (ACA’s) mandate that individuals have health insurance that meets ACA standards, or else pay a penalty. Two crucial points regarding the IRS announcement should be underscored, said Jeff Cronin, vice president at Sovos, a Minneapolis-based compliance software company: The announcement only applies to personal income tax filers—it does not affect employer’s disclosure and reporting obligations. It is not a repeal of the individual mandate; penalty provisions are still in place and are currently being enforced. The IRS indicated that it will accept tax returns lacking this information in light of President Donald Trump’s executive order directing agencies to minimize the ACA’s regulatory burden. While the requirement to have ACA-compliant coverage or pay a tax penalty has been in place since 2014, starting this year the IRS was to have begun automatically flagging and rejecting tax returns missing that information. This action by the IRS doesn’t mean it won’t enforce the individual mandate," said Lisa Carlson, senior Employee Retirement Income Security Act (ERISA) attorney at Lockton Compliance Services in Chicago. "This action simply means the IRS won't reject a taxpayer's return outright if the taxpayer doesn't answer the health coverage question. The IRS reserves the right to follow up with a taxpayer, at a future date, regarding his or her compliance with the individual mandate, if the person's tax return doesn't provide information about his or her health insurance coverage during 2016." Enforcement Uncertainty - For those individuals who previously filed without providing health insurance information or who indicated that they did not carry coverage as was required, "whether the IRS will assess penalties depends on the retroactive nature of [a possible future] repeal of the individual mandate or its penalties," Carlson said. While the IRS announcement does not suggest that the agency won't be strictly enforcing the individual mandate tax penalty, "we just don't know" what enforcement actions the agency might take, said Garrett Fenton, an attorney with Miller & Chevalier in Washington, D.C., whose practice focuses on employee benefits, tax and executive compensation. While it's unclear how strenuous IRS enforcement actions might be, "the individual mandate and its related tax penalties are certainly still on the books, and it would require an act of Congress to change that," Fenton noted. If tax filers leave unchecked the box indicating that they have ACA-compliant coverage, "the IRS may come back and ask them follow-up questions, and they still may get audited and potentially owe the tax penalty. Employer Compliance - "The ACA is still the law of the land," advised Scott Behrens, a senior ERISA attorney at Lockton Companies in Kansas City, Mo. "Prudent employers will want to continue to comply with the ACA, including the play-or-pay mandate and reporting requirements"— furnishing Forms 1095-C to employees and making all required filings with the IRS—"until formal guidance relieves them of those compliance obligations." Despite the IRS announcement, "employers are still required to file their ACA reporting forms," Cronin agreed. "Those forms will be rejected if they do not contain the requisite information. Because the President has indicated that we may not see a repeal until 2018, employers will still be required to operate their health plans in an ACA-compliant manner until notified otherwise." In the context of the employer mandate, waiver of penalties seems unlikely because these penalties are written into law and are a significant source of revenue for the federal government, Cronin said. Beyond the possible extension of "good faith" relief to tax year 2017 filings, "there will not likely be any IRS changes to employers' reporting obligations pursuant to the President's executive order," he predicted. The bottom line: "Those who are responsible for issuing and filing 1094s and 1095s on behalf of their organizations should continue to comply with all relevant laws, regulations, reporting requirements and filing specifications during the repeal-and-replace process," said Cronin. Deadlines Loom - The IRS issued Notice 2016-70 in November 2016, giving employers subject to the ACA's 2016 information-reporting requirements up to an additional 30 days to deliver these forms to employees. The notice affected upcoming deadlines for ACA information reporting as follows: The IRS extended the deadline to deliver ACA reporting forms to employees from Jan. 31 to March 2. Employers must deliver to workers the 2016 Form 1095-C (Employer-Provided Health Insurance Offer and Coverage) and Form 1095-B (Health Coverage). The Treasury Department and the IRS determined that a substantial number of employers and other insurance providers needed additional time "to gather and analyze the information [necessary to] prepare the 2016 Forms 1095-C and 1095-B to be furnished to individuals," Notice 2016-70 stated. This extension applies for tax year 2016 only and does not require the submission of any request or other documentation to the IRS. The IRS did not change the deadline for filing Forms 1094 and 1095 with the agency. This indicated no automatic extension was likely to file the 2016 Form 1094-B (Transmittal of Health Coverage Information Returns) along with copies of Form 1095-B, and Form 1094-C (Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns) along with copies of Form 1095-C. Employers filing these forms by mail will still need to do so by Feb. 28. Employers filing electronically (as those submitting 250 or more forms are required to do) must do so by March 31. Although the date for filing with the IRS was not extended, employers can obtain a 30-day extension by submitting Form 8809 (Application for Extension of Time to File Information Returns) by the due date for the ACA information returns.
"While Congress considers options to repeal and replace the ACA, businesses should prepare to comply with the current employer mandate through 2018," said Cronin. "Businesses should pay close attention to decisions over the next few weeks, but be prepared to stay patient because significant details on employer obligations are unlikely to take shape for some time," he advised. "We've got to act as if the individual and employer mandates are and will continue to be on the books indefinitely until we hear otherwise," said Fenton. "Congress certainly isn't going to be passing a repeal tomorrow by any means."  

Source: SHRM HR Daily, 2/22/17, Stephen Miller

Managing Divisive Politics in the Workplace - Prior to the 2016 presidential election, media commentators expected the divisive political atmosphere that had permeated American society to dissipate after the vote. Weeks into President Donald Trump's administration, that is anything but the case. Instead, the manner in which national politics increasingly encroaches on our personal and workplace relationships appears to have become a new normal. The president's executive order attempting to ban certain refugees and foreign nationals from entering the country is a case in point. The order immediately triggered widespread protests, with opposition demonstrations dominating the news. Some demonstrations involved employees protesting hand-in-hand with their employers. For example, at several tech and media companies, including Google, employees staged walkouts with employer approval and attended rallies where company leaders spoke. Other people protested in defiance of their employers, including several professors at Clemson University, who went on a six-day hunger strike in response to what they perceived as the university's inadequate response to the president's order. Less publicized are the controversies human resource professionals are dealing with day in and day out—a heated break room conversation, an activist distracting co-workers or a manager's social media proclamations. Indeed, a recent study cited by The Washington Post found that, since November, about one-third of workers think their colleagues talk more about politics than about work! What can HR professionals do to foster a cooperative, productive work atmosphere that doesn't squelch individuals' right to have their opinions?  

Make Cooperation Key - Find ways to reaffirm a principle that should already serve as a foundation for your organization's policies: The work environment should be a place of mutual respect where employees feel valued by their employer and peers (notwithstanding the National Labor Relations Board [NLRB] general counsel's dislike of the use of the word "respectful"). Employees should also know that the organization expects that conversations and activities not related to work will not detract from what should be the primary focus—work. An important step in reaffirming these principles may be a message from the organization's leadership, perhaps delivered during an all-hands meeting. That message can reflect the organization's appreciation for workers' active citizenship while reminding them to cooperate with one another and not to allow political discussions to distract them or their peers from fulfilling their job duties. It also is an opportunity to remind them that, regardless of the topic, workplace conversations should not be of an uncooperative nature or discriminatory, provided that employees have the right to engage in protected concerted activity. Importantly, meetings and messages of this type should never aim to influence or control employees' political activity—which is prohibited by some state laws—but should rather reaffirm appropriate workplace behavior and a culture of cooperation without encroaching on employees' rights under the National Labor Relations Act. Some employers may consider a blanket ban on political conversation in the workplace, but be wary of this. Such a ban is difficult to police and may be overbroad. Employers have a right to discuss matters affecting their working conditions, and the lines between abstract political statements and observations about work often will be blurry. Besides refocusing employees on the importance of cooperating with one another, building a culture of respect also can help your company respond to employee activism. If employees have an opinion to share, there is usually no reason not to listen. It may be that your organization is in a position and wishes to take public action. If so, still take care to protect the rights of dissenters within the employee ranks from harassment and retaliation. Further, federal election law and the laws of several states prevent employers from providing substantial resources in support of employees' political activities or from imposing their own views. Therefore, consult with counsel when presented with large-scale activism. And, of course, it is acceptable to disagree with your employees' views, but when you do, make sure you communicate in a manner that demonstrates your respect for their engagement as private citizens.  

Review and Enforce Applicable Policies - Second, review your company's applicable policies and be prepared to enforce them. Federal anti-discrimination law does not prohibit discrimination or harassment on the basis of political affiliation (though some state laws do), but the policies you have in place should help you prevent conflict from occurring and resolve it appropriately if it does. For example, a broad and clear anti-discrimination and anti-retaliation policy will help employees understand what sorts of statements are prohibited in the workplace. In addition, a strong anti-harassment policy should include a clear reporting procedure. The procedure should detail the individual to whom complaints should be directed and be explicit in proscribing retaliation for complaints made in good faith. A description of this procedure and employees' confidence in it should serve as deterrents to conversations turning uncooperative. Just as important is having an up-to-date social media policy. In recent years, the NLRB has taken a keen interest in these policies, along with others affecting employee communications, even those maintained by nonunion employers. The NLRB has made it clear that employers may not control the social media activity of their employees. However, you may educate workers on how their activities may be perceived by others and remind them that your anti-discrimination and harassment policies apply even online. You also may wish to advise supervisors to exercise particular caution in their use of social media. While supervisors should be allowed to use digital platforms outside of the workplace, they must be cautious not to alienate employees with their messages.  

Address Unique Needs - Third, be sure to consider your unique needs and those of your workers. Labor contracts, local laws and nonprofit status can all affect the way your company may respond to various forms of employee activism. Once you have determined a strategy, be sure to communicate with your employees. Showing respect for them by making your policies clear can go a long way toward engendering the cooperative spirit you are asking them to show toward one another. Source: SHRM Employment Law, 2/27/17, Brian Pedrow and Christopher Cognito