

January 11, 2010 | Posted By

Reminder For Corporations To Issue Annual ISO/ESPP Information Statements To Employees By January 31

Employers must furnish employees who exercised incentive stock options ("ISOs") or sold or otherwise transferred shares acquired under an employee stock purchase plan ("ESPP") during 2009 with a detailed information statement by January 31, 2010.

As we reported in our November 19, 2009 [blog article](#), the Internal Revenue Service recently issued final regulations regarding the information return and information statement requirements under Section 6039 of the Internal Revenue Code. Section 6039 was amended in 2006 to require corporations to file an information return with the IRS, in addition to providing the information statement to employees. Although the final regulations apply as of January 1, 2007, employers are not required to file an information return with the IRS for stock transfers that occurred during 2007, 2008 or 2009. However, employers must continue to provide the information statement to employees for transfers that occurred during those years.

In furnishing the information statement for transfers that occurred during the 2009 calendar year, employers may rely on the prior 2004 final regulations, the 2008 proposed regulations, or the newly issued 2009 final regulations. Employers may wish to continue following the prior 2004 final regulations, with which they are familiar and which do not include certain enhanced disclosure requirements (for example, the final regulations retain the requirement of the proposed regulations, as reported in our July 23, 2008 [blog article](#), that the information statement report the exercise price per share with respect to ESPP stock transfers, rather than the total cost of all shares acquired). However, employers will be required to comply with the new 2009 final regulations with respect to transfers that occur in 2010. The IRS plans to issue two forms to be used to satisfy both the information statement and return requirements, but has not yet done so.

For further information and sample information statements, please contact [Gregory Schick](#) at (415) 774-2988 or [Dawn Mayer](#) at (213) 617-4246.