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Don't forget that employers must report incentive stock option ("ISO") and employee stock purchase plan ("ESPP") purchases for 2012 by January 31, 2013. This was a new requirement for 2010 purchases, and may have caught some employers by surprise since the IRS had delayed implementation for many years previously. Hopefully by now employers have worked the forms into their January payroll reporting routines.

The forms are:

- Form 3921, Exercise of an Incentive Stock Option Under Section 422(b), at <http://www.irs.gov/pub/irs-pdf/f3921.pdf> and
- Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c), at <http://www.irs.gov/pub/irs-pdf/f3922.pdf>.

The forms must be filed with the IRS and provided to the affected employee by January 31st.

The new requirements do not apply to a stock option that is not an ISO (within the technical meaning of Code Section 422) or to any transfers of stock under a stock purchase plan that is not intended to qualify under Code Section 423. In addition, the reporting requirements generally do not apply to nonresident aliens who perform services outside the United States and for whom the company is not required to issue a Form W-2.

For assistance with these reporting requirements, or if you have questions about any other stock option or employee benefit matters, please contact a member of our Benefits Law Group.

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