



## Office Hours Webinar

# The ACA Employer Mandate & ACA Reporting

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Presented by:  
**Brian Gilmore**  
Lead Benefits Counsel, VP



**Newfront**  
Formerly ABD

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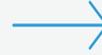
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# Today's Topics

## The ACA Employer Mandate

### *Plus the Associated ACA Reporting Requirements*

- The ACA employer mandate rules are frequently also referred to as the “employer shared responsibility” or “pay or play” rules—these are synonymous!
- There are two potential employer mandate penalties the “A Penalty” and the “B Penalty” from IRC §4980H(a) and §4980(b)
- Employers report whether they are subject to either penalty in the §6056 ACA reporting via Forms 1094-C and 1095-C
- We have had a good faith enforcement safe harbor and deadline extensions in all prior ACA reporting years, but the IRS has already said not to expect it this year
- Without the time and content relief this year, ACA reporting at the beginning of 2022 (to report on 2021) will take on additional importance

## ACA Employer Mandate and Reporting Topics for Discussion

- |   |                                                                                                                     |
|---|---------------------------------------------------------------------------------------------------------------------|
| 1 | <b>Applicable Large Employers:</b> ALE status determines whether employers are subject to these rules               |
| 2 | <b>Employer Mandate Penalties:</b> Reviewing the A Penalty and B Penalty potential liabilities                      |
| 3 | <b>Full-Time Employee Status:</b> The monthly measurement method and look-back measurement method                   |
| 4 | <b>Affordability:</b> Utilizing an affordability safe harbor to avoid penalties, including reduced 2022 % threshold |
| 5 | <b>ACA Reporting:</b> Understanding the §6055 and §6056 reporting structure via Forms 1094-C and 1095-C             |

# The ACA Employer Mandate



# 1. Applicable Large Employer (ALE)

## IRC §4980H Penalties Generally Applied as of January 1, 2015

Generally requires **applicable large employers** to offer **minimum essential coverage** that is **affordable** and provides **minimum value** to all **full-time employees** (and their children to age 26) to avoid potential penalties.

- **Applicable Large Employer:** Generally an average of at least 50 full-time employees (including full-time equivalents) in the preceding calendar year for all members of controlled group
- **Minimum Essential Coverage (MEC):** Includes virtually any employer-sponsored major-medical coverage (but not dental, vision, health FSA, EAP, disability, etc.)
- **Affordable:** Employee share of the premium for the lowest cost self-only plan option that provides minimum value does not exceed 9.61% (2022 indexed amount) of employee's income under one of three safe harbor approaches
- **Minimum Value (MV):** The percentage of the total allowed costs of benefits provided under the plan is no less than 60 percent (aka 60% actuarial value, Bronze level plan)
- **Full-Time Employees:** Employees averaging at least 30 hours of service per week under:
  - The Look-Back Measurement MethodOR
  - The Monthly Measurement Method

An employer is an applicable large employer (ALE) in the current year if it employed (along with all members of its controlled group) an average of at least **50 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year**. For purposes of determining whether an employer is an ALE, the employer must convert part-time employees into full-time equivalents. *Note: Special rules apply for seasonal workers and certain veterans.*

## ALE Calculation

1. Calculate the number of **full-time employees** for each calendar month in the preceding calendar year. For purposes of this calculation only, full-time employee means those who worked at least **120 hours of service in a month**. (Note that for all other purposes under the pay or play rules, full-time is 130 hours of service per month)
2. Calculate the number of full-time **equivalents** for each calendar month in the **preceding calendar year** as follows:
  - A. Calculate the aggregate hours of service in a month for employees who are **not** full-time employees for that month (i.e., did **not** work at least 120 hours of service in that month).
  - B. Divide the total hours of service from Step A by 120. The result is the number of full-time equivalent employees for the month.
3. Add the number of full-time employees and full-time equivalents obtained in Steps 1 and 2 for each month of the preceding calendar year.
4. Add up the 12 monthly numbers from Step 3 and divide the sum by 12. This is the average number of full-time employees (including full-time equivalents) for the preceding calendar year.
5. If the number obtained in Step 4 is less than 50, then the employer is not an ALE for the current calendar year. If the number obtained in Step 4 is 50 or more, the employer is an ALE for the current calendar year.

## Examples

### Example 1

Employer's controlled group averaged **43** full-time employees (including full-time equivalents) in 2021.

#### Result:

Employer is **not** an ALE in 2022

#### What does the result mean?

- Employer **is not** subject to pay or play (no potential §4980H penalties) in 2022
- Employer **is not** subject to ACA reporting (§6055/§6056 via Forms 1094-C and 1095-C) for the 2022 calendar year that is reported at the beginning of 2023
- *Note: §6055 reporting via Forms 1094-B and 1095-B will apply if the employer offered a self-insured medical plan*

### Example 2

Employer's controlled group averaged **55** full-time employees (including full-time equivalents) in 2021.

#### Result:

Employer is an ALE in 2022

#### What does the result mean?

- Employer is subject to potential pay or play penalties (under §4980H) in 2022
- Employer is subject to ACA reporting (§6055/§6056 via Forms 1094-C and 1095-C) for the 2022 calendar year that is reported at the beginning of 2023

## **2. Employer Mandate Penalties**

## §4980H(a)—The "A Penalty" Aka: The "Sledgehammer Penalty"

- **Failure to offer MEC to at least 95% of all full-time employees (and their children to age 26)**
- The A Penalty is triggered by at least one such full-time employee who is not offered MEC enrolling in subsidized exchange coverage
- **2021 A Penalty liability is \$2,700 annualized (\$225/month) multiplied by all full-time employees**
  - **30 full-time employee reduction from multiplier**

## §4980H(b)—The "B Penalty" Aka: The "Tack Hammer Penalty"

- Applies where the employer is not subject to the A penalty
- **Failure to:**
  - 1. Offer coverage that's affordable**
  - 2. Offer coverage that provides MV**
  - 3. Offer MEC to a full-time employee (where the employer has still offered at a sufficient percentage to avoid A Penalty liability)**
- The B Penalty is triggered by any such full-time employee enrolling in subsidized exchange coverage
- 2021 B Penalty liability is \$4,060 annualized (\$338.33/month) multiplied by each such full-time employee who enrolls in subsidized exchange coverage
  - Note that although the B Penalty amount is higher (\$4,060 vs. \$2,700), the multiplier is generally much lower (only those full-time employees not offered affordable/minimum value coverage who enroll in subsidized exchange coverage)

## §4980H(a)—The "A Penalty" Aka: The "Sledgehammer Penalty"

### SIMPLIFIED VERSION

- **Must offer MEC to at least 95% of full-time employees and their children to age 26**
- To avoid the "A Penalty"
- 2021 A Penalty liability is \$2,700 annualized (\$225/month) multiplied by all full-time employees (reduced by first 30)

## §4980H(b)—The "B Penalty" Aka: The "Tack Hammer Penalty"

### SIMPLIFIED VERSION

- The offer of MEC must:
  - a. **Be affordable; and**
  - b. **Provide minimum value (MV)**
- To avoid the "B Penalty"
- **2021 B Penalty liability is \$4,060 annualized (\$338.33/month)** multiplied by each such full-time employee who enrolls in subsidized exchange coverage

## ALE Status Is Aggregated, but Penalties Are Separated

- ALE status is an aggregated count among all members of the controlled group, but “A Penalty” calculations are siloed to each specific member (ALEM).
- **For employers with multiple corporate entities (generally multiple separate EINs) within the controlled group, the A Penalty will apply separately to each entity (ALEM).**
- Means the 95% test for the A Penalty applies to each ALEM independently.
- If any ALEM fails to offer coverage to at least 95% of that ALEM’s full-time employees, the A Penalty applies to that ALEM.
- The A Penalty calculation is based only on the full-time employees of that ALEM.
- The 30-employee reduction will be a proportional amount based on ALEM size.

## Example

- ALE Big Co. (1,000 EEs) acquires non-ALE Lil' Co. (40 EEs)
- Big Co. and Lil' Co. keep separate EINs and separate corporate entities



## Result

- Lil' Co. becomes an ALEM subject to employer mandate as of the close
- If Lil' Co. fails to offer coverage to at least 95% of Lil Co.'s full-time employees in any subsequent month, Lil' Co. will be subject the an A Penalty based only on the number of Lil' Co.'s full-time employees (Big Co.'s full-time employees are not part of calculation)
- 30 employee reduction will be a small proportional amount (in relation to overall controlled group number of employees, which is dominated by Big Co.)

# 3. Determining Employees' Full-Time Status

## There Are Two Different Measurement Methods!

ALEs subject to the ACA pay or play rules generally may apply either measurement method to determine employees' full-time status:



- The monthly measurement method is generally recommended for employers with all or almost all full-time workforce
- The look-back measurement method is generally recommended for employers with a significant population of employees who may fluctuate above and below 30 hours per week
- **See here for full details on the pros/cons of each measurement method depending on your situation:**  
<https://www.theabdteam.com/blog/key-decision-points-in-aca-reporting-vendor-setup-questionnaires-part-i/>

The look-back measurement method provides an alternative to the monthly measurement method. Under look-back, employers test whether an employee averages 30 hours of service per week in a measuring period to lock in full-time or part-time status for the associated stability period. Employers can also place new variable hour, seasonal, and part-time employees in an initial measurement period prior to reaching full-time status.

## Ongoing Employees

- Generally, if look-back measurement method is used for one employee to determine full-time status, it must be used for all employees.
- **Exception:** Employer can choose separate measurement methods for:
  - Hourly vs. salaried
  - Employees in different states
  - Union vs. non-union
  - Employees in different union groups
- **Typical structure:**
  - Measurement period: 11/1 – 10/31
  - Administrative period: 11/1 – 12/31
  - Stability period: 1/1 – 12/31
- *Note: 90-day administrative period limit prohibits measurement period running from 10/1. Many employers therefore use 10/15 or 11/1 as a starting point for the standard measurement period.*

## Stability Period Keeps Status “Stable” Even After Reduction in Hours

### Employers Utilizing Look-Back Measurement Method to Determine Employees’ Full-Time Status

- The standard measurement and stability period rules will continue to apply to an employee who has experienced a reduction in hours, is furloughed, or is on a leave of absence
- The look-back measurement method will therefore preserve full-time status for at least the remainder of the current stability period (generally plan year) for those employees who tested as full-time during the prior measurement period

### Key Points Under the Look-Back Measurement Method

1

An employee who is in a stability period as full-time and experiences a change in employment status to working part-time hours will nonetheless remain full-time for ACA purposes the duration of the current stability period. The employee’s full-time status is kept “stable” for the entire stability period regardless of how many hours per week the employee is currently working.

2

Employees who do not average at least 30 hours of service over the full standard measurement period (i.e., generally do not reach 1,560 hours of service in the typical 12-month standard measurement period) can be removed from coverage as of the start of the new stability period (generally the start of the new plan year) because the employee will be treated as part-time for ACA purposes for the duration of that stability period. This will be a COBRA qualifying event as of the end of the plan year in which the employee loses coverage (loss of coverage caused by a reduction in hours).

## New Hires

- New full-time employees must be offered coverage by the first day of the fourth full calendar month of employment to avoid potential penalties.
- New variable hour, seasonal, and part-time employees may be placed in an initial measurement period before being treated as full-time.
  - Combined duration of initial measurement period and initial administrative period cannot exceed 13 months (plus a partial month for mid-month hires).

### Typical Structure for New Variable/Seasonal/Part-time Employee:

- **Hired on March 15, 2021**
  - **Initial administrative period:** 3/15/21 – 3/31/21 (front-end of split administrative period)
  - **Initial measurement period:** 4/1/21 – 3/31/22
  - **Initial administrative period:** 4/1/22 – 4/30/22 (back-end of split administrative period)
  - **Initial stability period:** 5/1/22 – 4/30/23
- *Note: Special rule permits 11-month initial measurement period, which would allow a two-month back-end initial administrative period. Many employers choose that approach.*

New Full-Time Employee	New Variable Hour Employee	New Seasonal Employee	New Part-Time Employee
<p>An employee who is reasonably expected at the employee’s start date to be a full-time employee (i.e., average 30 hours of service per week)—and is not a seasonal employee.</p>	<p>The employer cannot determine whether the employee is reasonably expected to be employed on average at least 30 hours of service per week during the initial measurement period.</p>	<p>An employee who is hired into a position for which the customary annual employment is six months or less.</p>	<p>An employee who is reasonably expected to average less than 30 hours of service per week during the initial measurement period.</p>
<ul style="list-style-type: none"> <li>• Factors include whether the prior person in the position averaged 30 hours of service per week, and whether the job was advertised/communicated as requiring 30 hours of service per week.</li> <li>• Pay or play penalties do not start until after the employee has completed a limited non-assessment period.</li> <li>• No penalties will apply until the first day of the fourth full calendar month of employment—if the employee is still employed on that day.</li> </ul>	<ul style="list-style-type: none"> <li>• This occurs because the employee’s hours are expected to be variable or otherwise uncertain.</li> <li>• May apply an initial measurement period and initial administrative period before offering coverage in initial stability period (if the variable hour employee tested as full-time during the initial measurement period).</li> <li>• Limit on combined length of initial measurement period and initial administrative period is 13 months (plus a partial month for a mid-month hire).</li> </ul>	<ul style="list-style-type: none"> <li>• The period should begin each calendar year in approximately the same part of the year, such as summer or winter.</li> <li>• In certain unusual circumstances, the employee can still be considered seasonal if the employment period is extended beyond its customary duration (e.g., ski instructor works seven months in heavy snow winter).</li> <li>• Same initial measurement and initial administrative period rules apply.</li> </ul>	<ul style="list-style-type: none"> <li>• Same initial measurement and initial administrative period rules apply.</li> <li>• As with variable hour and seasonal employees, the employer will not need to offer coverage to avoid pay or play penalties if the part-time employee does not             <ol style="list-style-type: none"> <li>a. test as full-time during the initial measurement period, or</li> <li>b. remain employed long enough to reach the initial stability period.</li> </ol> </li> </ul>

Under the monthly measurement method, an employee's status as full-time or part-time is determined on a monthly basis by the employee's hours of service for each calendar month. This method does not provide the predictability of the look-back measurement method. Employers will not know whether employees are full-time until the month is complete, and all hours recorded. However, for primarily salaried, full-time workforces—and particularly with eligibility requirements under 30 hours per week—this method avoids significant complexity.

## Ongoing Employees

- Full-time status is determined by actual hours of service performed in that month
- There is no look-back period to lock in an employee's status as full-time or part-time
- **Use this approach when it is clear that employees working at least 130 hours of service in any given calendar month will be offered coverage (e.g., all salaried, full-time workforce)**
- **Advantages:** Employer can choose separate measurement methods for:
  - Administrative simplicity for workforces with generally stable hours
  - Limited non-assessment period available the first time an employee works full-time in a month
- **Disadvantages:**
  - No predictability as to full-time/part-time status for the plan year because it is determined monthly
  - Not feasible for workforces with a significant population that regularly fluctuates above and below 130 hours
  - Can't determine hours of service in the month until it has been completed (when it's too late to offer coverage)
  - No initial measurement period available to delay offering coverage to new variable/seasonal/part-time hires

## New Hires

- **Three-month rule:** Can be applied **only once** per period of employment.
- Applies when an employee first works at least 130 hours of service in a calendar month.
  - This might be the first month of employment or a subsequent month.
- First month working 130 hours of service triggers the three-month rule.
- **Creates a limited non-assessment period of two full calendar months following the end of that first calendar month.**
- Think of this limited non-assessment as providing relief during the plan's waiting period for coverage after the employee triggers eligibility by working full time for a month.

## Example

- Employee is hired in January
- Employee works 125 hours of service for January and February (**130 is full-time**)
- Employee works 135 hours of service in March



## Result

- **March full-time work triggers:**
  1. **Eligibility for the health plan, and**
  2. **The three-month rule's limited non-assessment period**
- Employer will need to offer coverage to the employee within its waiting period per the terms of the plan
- Limited non-assessment period accommodates maximum potential waiting period by not imposing pay or pay penalties for the months of March, April, May
- Employer must offer coverage that is affordable and provides minimum value by the first day of June to avoid penalties for March through May and beyond

# 4. Contingent Workforce

### There are no special pay or play rules for temps, interns, or short-term employees

*“The Treasury Department and the IRS continue to be concerned about the potential for abuse of any exception for short-term employees through the use of initial training period positions or other methods intended to artificially divide the tenure of an employee into one or more short-term employment positions in order to avoid application of section 4980H. **For these reasons, the final regulations do not adopt any special provisions applicable to short-term employees.**”*

### This means the same rules will apply to short-term employees as any other new hire

In some cases, not offering coverage to these short-term employees may subject the employer to potential pay or play penalties under §4980H.

## Threshold Issue

**Threshold issue** is whether the temp hired through a temp agency is a “common-law employee” of your company or the temp agency.

**Treas. Reg. §54.4980H-1(a)(15):**

*“The term employee means an individual who is an employee under the common-law standard.”*

This means pay or play penalties will apply only if the temp is your company’s common-law employee:

*“Under the common law standard, an employment relationship exists when the person for whom the services are performed **has the right to control and direct the individual who performs the services**, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. Under the common law standard, an employment relationship exists if an employee is **subject to the will and control of the employer** not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.”*

## 3 Factors to Determine the Employment Relationship

The IRS makes clear in preamble to final regulations that in the “typical case,” the temp will be a common-law employee of the company hiring the temp—**not the outside staffing firm.**

<http://www.irs.gov/taxtopics/tc762.html>



### **Behavioral Control**

Right to direct and control work



### **Financial Control**

Right to direct or control financial and business aspects



### **Relationship of the Parties**

Facts and circumstances of arrangement

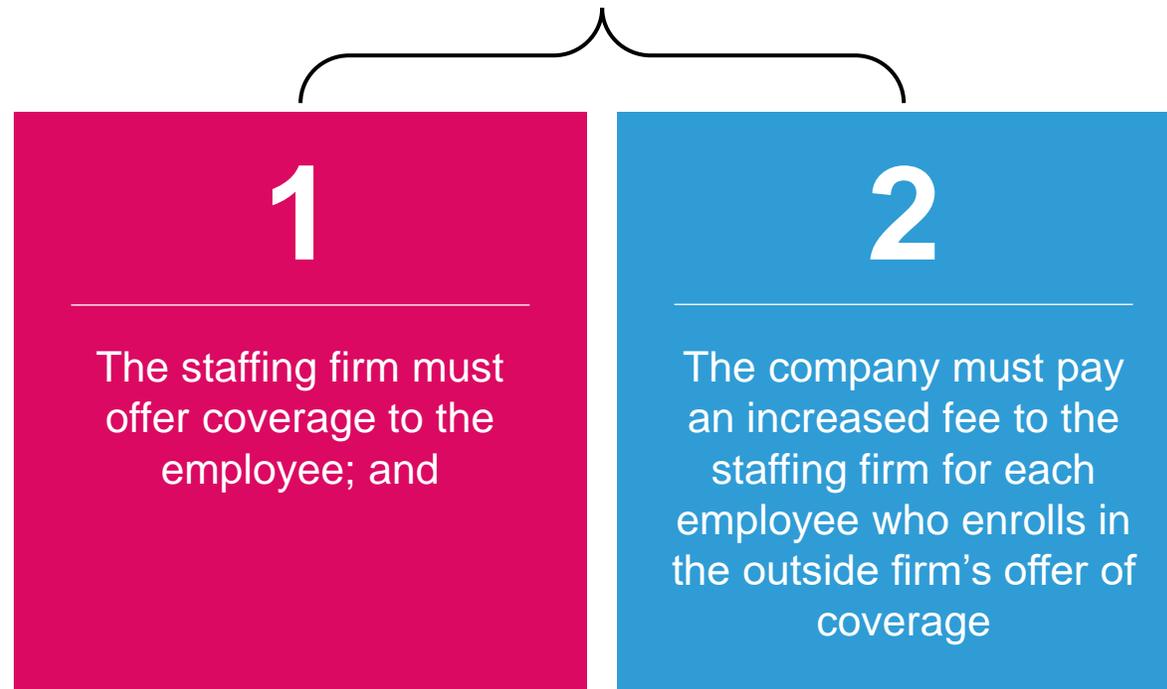
Assuming the worker from the staffing firm is your common-law employee, your company must offer coverage to avoid penalties in the same manner as a standard employee on your payroll.

However, the rules establish a procedure where an offer of coverage by the outside staffing firm will be treated as an offer of coverage by the company:

**Treas. Reg. §54.4980H-4(b)(2):**

*“(2) Offer of coverage on behalf of another entity...For an offer of coverage to an employee performing services for an employer that is a client of a staffing firm, in cases in which the staffing firm is not the common law employer of the individual and the staffing firm makes an offer of coverage to the employee on behalf of the client employer under a plan established or maintained by the staffing firm, the offer is treated as made by the client employer for purposes of section 4980H **only if the fee the client employer would pay to the staffing firm for an employee enrolled in health coverage under the plan is higher than the fee the client employer would pay the staffing firm for the same employee if that employee did not enroll in health coverage under the plan.**”*

## Two Requirements



Note that a flat fee increase for all employees is not sufficient here—fee must increase only for those who enroll!

*Make sure your contract with the staffing firm is updated to reflect this requirement.*

# 5. Leaves and Rehires

Paid Leave of Absence	Unpaid Leave	“Special” Unpaid Leave
<p>Paid leave is considered hours of service for purposes of pay or play.</p>	<p>An unpaid leave of absence that does not qualify as “special unpaid leave”.</p>	<p>Unpaid leave that is:</p> <ul style="list-style-type: none"> <li>• Subject to FMLA</li> <li>• Subject to USERRA; or</li> <li>• On account of jury duty</li> </ul>
<ul style="list-style-type: none"> <li>• This is because with paid leave, the employee is entitled to payment for a period during which no duties are performed due to the leave of absence.</li> <li>• Means that a period of paid leave will be treated the same as a period of active employment duties.</li> <li>• When using the look-back measurement method, the employee will have <b>hours of service credited in the measurement period for the duration of the paid leave</b> as if active or on paid vacation.</li> </ul>	<ul style="list-style-type: none"> <li>• In this case, the employee will not receive any hours of service credit.</li> <li>• When using the look-back measurement method, the employee will have <b>no hours of service for the duration of the unpaid leave.</b></li> <li>• If the employee is at or near 30 hours per week when active, the period of unpaid leave could cause the average over the course of the full measurement period to dip below 30—resulting in the employee being treated as part-time for the associated stability period.</li> </ul>	<p>When using look-back measurement method, two options for addressing special unpaid leave:</p> <ul style="list-style-type: none"> <li>• <b>Excluded Period:</b> Exclude the period of special unpaid leave from the measurement period computation by determining the employee’s average hours of service without the period of special unpaid leave.</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• <b>Imputed Hours:</b> Credit the employee with hours of service during the period of special unpaid leave at a rate equal to the average weekly hours of service for weeks that were not part of the special unpaid leave.</li> </ul>

Break in Service: 13 or More Consecutive Weeks	Break in Service: Rule of Parity	No Break in Service: Continuing Employee
<p>Where the employee did not have an hour of service for the company for a period of at least 13 consecutive weeks.</p>	<p>Rule of parity applies where the break in service is at least four consecutive weeks, but shorter than 13 consecutive weeks (26 weeks for educational organization).</p>	<p>Where the period of leave (or period between termination and rehire) is not a break in service, the returning employee must be treated as a “continuing employee”.</p>
<ul style="list-style-type: none"> <li>• Upon return from leave, <b>the employee can be treated as a new employee.</b></li> <li>• The same principles in this case would apply to a new hire.</li> <li>• If full time, must offer coverage no later than the first day of the fourth full calendar month to avoid penalties.</li> <li>• If variable hour, seasonal, or part-time, employer can put the returning employee through a new initial measurement period before offering coverage.</li> <li>• Note that the break period must be 26 weeks to treat the employee as a new employee if the employer is an educational organization.</li> </ul>	<ul style="list-style-type: none"> <li>• Under the rule of parity, a break in service occurs <b>if the employee’s period with no credited hours of service is longer than the employee’s immediately preceding period of employment.</b></li> <li>• For example, employee works three weeks for an employer prior to going on unpaid leave (not “special”) of ten weeks.             <ul style="list-style-type: none"> <li>• The ten-week period with no hours of service is a) at least four weeks long, and b) longer than the immediately preceding three-week period of employment.</li> </ul> </li> <li>• Under the rule of parity, this is a break in service, and the employer may treat the employee as a new employee upon return.</li> </ul>	<ul style="list-style-type: none"> <li>• Under the look-back measurement method, a continuing employee will return to the same status in the stability period.</li> <li>• This means that if the continuing employee returns in a stability period in which the employee was being treated as full-time before the leave, the employee will be treated as full-time upon return and through the end of the stability period.</li> <li>• Continuing full-time employees enrolled prior to termination must be offered coverage upon first day of return, or, if later, <b>as soon as administratively practicable</b></li> <li>• Rules deem first day of the calendar month following return to always comply under this standard.</li> </ul>

# 6. Hours of Service

## Treas. Reg. §54.4980H-1(a)(24) defines an “hour of service” as follows:

1. **Active Duties:** Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and
2. **Inactive Payments:** Each hour for which an employee is paid, or entitled to payment by the employer for a period during which no duties are performed due to:
  - a) Vacation,
  - b) Holiday,
  - c) Illness,
  - d) Incapacity (including disability),
  - e) Layoff,
  - f) Jury duty,
  - g) Military duty, or
  - h) Leave of absence

## Treas. Reg. §54.4980H-3(b) sets forth the calculation rules:

### Hourly Employees:

- **Actual Hours:** Employer must calculate actual hours of service from records of hours worked and hour for which payment is made or due
  - Generally straightforward data from payroll
  - Special exceptions for hard to track hours

### Non-Hourly Employees (e.g., Salaried):

1. **Actual Hours:** Use actual hours of service from records of hours worked and for which payment is made or due;
2. **Days-Worked Equivalency:** Employee is credited with eight hours of service for each day the employee is paid or entitled to pay; or
3. **Weeks-Worked Equivalency:** Employee is credited with 40 hours of service for each week the employee is paid or entitled to pay

## Included in Hours of Service

- IRS confirmed that payments are generally deemed to be made by the employer **regardless of whether the payment is made directly by the employer**
  - For example, payments made from an insurance carrier or trust fund to the employee are still considered made by the employer
- Most disability payments (other than state statutory plans) count as hours of service if the employee has not been terminated from employment
  - **Includes STD and LTD**—even where benefit payments made by carrier

## Excluded From Hours of Service

- Workers' compensation payments
- Unemployment payments
  - State disability payments (or voluntary replacements to comply with state STD requirements)
  - California SDI
  - California Voluntary Plan
- Statutory disability plans (or private replacements) in Hawaii, New Jersey, New York, and Rhode Island
- Disability plan payments made from arrangements to which the employer did not directly or indirectly contribute
  - Requires that the premium was exclusively paid by employee after-tax contributions to qualify

### Applying Non-Hourly Employee Methods

- **Again, these are actual hours, days-worked equivalency (8 hours/day), and weeks-worked equivalency (40 hours/week).**
- Employers are not required to use the same method for all non-hourly employees.
- May apply different methods to different categories of non-hourly employees as long as the categories are reasonable and consistently applied.
- Employers may change the method for each calendar year.

### Prohibited Non-Hourly Employee Methods

- Method applied must “**reflect generally**” the hours actually worked and the hours for which payment is made or due.
- **One employee:** Can’t use an equivalency method that would “**substantially understate**” an employee’s hours to cause that employee to not be full-time.
- **Group of employees:** Can’t use an equivalency method that would understate the hours of a “**substantial number of employees**” (even if no particular employee’s hours are understated substantially or caused to lose full-time status).
- **Example:** Employer may not use a days-worked equivalency for an employee who works three 10-hour days per week. This would cause the employee to have 24 hours per week and be part-time instead of 30 hours actually worked and full-time status.

## Excluded Types of Work

- **Bona Fide Volunteers:** Employees of a government entity or 501(c) whose compensation is limited to reimbursement for expenses or reasonable benefits and nominal fees
- **Work-Study Students:** Services performed as part of a work-study program
  - All other types of student employees will have hours of service
  - IRS feared that blanket exception for paid internships or externships would lead to potential abuse
- **Service Outside the U.S.:** Compensation that is not U.S. source income
- **Vow of Poverty:** Religious orders do not need to count service by members who are subject to a vow of poverty for tasks usually required of active members

## Rules for Hard to Track Hours

- **Adjunct Faculty:** Employers may credit adjunct faculty with 2.25 hours of service per week for each hour of teaching or classroom time, 1.25 hours of service for class prep and grading, and one hour of service for office hours and faculty meetings.
- **Layover Hours:** Where the employee is not paid extra for the layover hours, the employer may credit the employee with 8 hours of service for each day the employee is required to stay away from home overnight—16 hours total for the two days encompassing an overnight stay.
- **On-Call Hours:** Must use a reasonable method to credit hours—includes requirement to credit hours for any paid on-call hours, or where the employee's on-call time is substantially restricted.

# 6. Avoiding Penalties

The IRS has now confirmed that the pay or play affordability safe harbors are indexed to inflation in the same manner as affordability is determined on the exchange. For 2022, the applicable percentage decreases to 9.61% (down from 9.83% in 2021).

**Full Details Available Here:** [How the 2022 ACA Affordability Decrease to 9.61% Affects Employers](#)

- **2022 Federal Poverty Line Safe Harbor: 9.61% of the Federal Poverty Line**
  - 2021 Federal Poverty Line (Continental U.S.): \$12,880
  - *2022 Monthly Employee-Share of Premium for Lowest-Cost Plan Limit: \$103.14*
- **2022 Rate of Pay Safe Harbor: 9.61% of Rate of Pay**
  - *Hourly Employees: 9.61% of Employee's Hourly Rate of Pay x 130*
  - *Salaried Employees: 9.61% of Employee's Monthly Salary*
- **2022 Form W-2 Safe Harbor (Not Recommended): 9.61% of Box 1 Wages**
  - Form W-2 safe harbor provides no predictability because Box 1 unknown until January of following year
  - Box 1 does not include many forms of compensation, including 401(k) deferrals and Section 125 salary reductions for health and welfare plan coverage
  - May work if employer sets employee contribution amount at a fixed percentage of income—but most employers aren't interested in this approach

## Employer Exchange Notices Are the First Bite at the Apple!

- Notifies employers that employee has been conditionally approved by the exchange for the Advance Premium Tax Credit (exchange subsidies)
- These subsidies trigger ACA employer mandate pay or play penalties
- **Employers care:** Remove subsidy, remove §4980H penalty (no later Letter 226J)
- **Employees care:** Remove subsidy, remove need to pay it back on tax return

Employer Exchange Notice Approach	Employer Offered Affordable/MV MEC	Employer Did NOT Offer Affordable/MV MEC
<b>Full-Time Employee</b>	<b>Strongly Recommend Appeal</b> <ul style="list-style-type: none"> <li>• Prevent ACA Employer Mandate §4980H Penalties</li> <li>• Prevent Repayment of APTC</li> </ul>	<b>Do Not Appeal</b> <ul style="list-style-type: none"> <li>• Employer will receive Letter 226J with §4980H penalties</li> </ul>
<b>Part-Time Employee</b>	<b>Consider Appeal</b> <ul style="list-style-type: none"> <li>• Prevent Repayment of APTC</li> </ul>	<b>Do Not Appeal</b> <ul style="list-style-type: none"> <li>• Nothing to appeal here</li> </ul>

## IRS Letter 226J

- Applicable Large Employers (ALEs) have been receiving ACA employer mandate penalty assessments since late 2017
- ALEs continue to be informed of prior year penalty assessments
- Many penalties are the result of ACA reporting errors on the Forms 1094-C and 1095-C
- Explanation of reporting errors and corrected codes usually removes penalties
- Keep relevant data because Letters 226J are generally for two years prior
- Review full alert for details on how to respond to Letter 226J

Dear

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

**Proposed ESRP \$ [XXXXXX]**

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

**Full Details Available Here:**  
[Responding to IRS Letter 226J](#)

# ACA Reporting: Forms 1094-C & Form 1095-C



# 1. Overview

# The ACA Added Two New Tax Code Sections: §6055 & §6056

## §6055

- Requires providers of health coverage to report to the IRS and covered individuals that the persons were covered by “minimum essential coverage.”
- This will demonstrate that each person has satisfied their individual mandate, and therefore will not be subject to the tax penalty.

## §6056

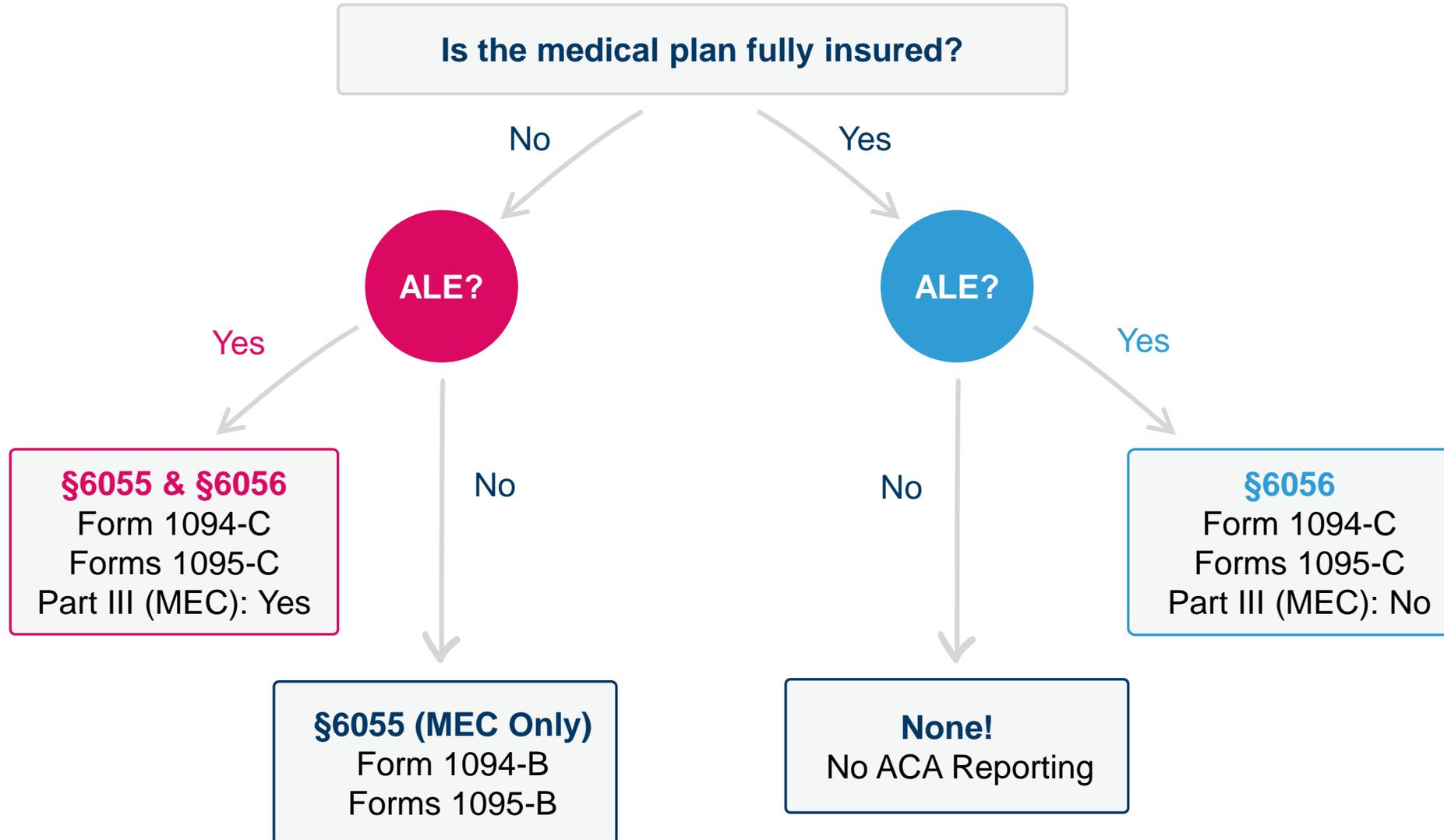
- Applies to “applicable large employers”—or “ALEs”—subject to the employer mandate pay or play rules—generally employers with at least 50 full-time employees, including full-time equivalent employees.
- This will be used to determine whether the employer is subject to any pay or play penalties under §4980H.
- It will also be used to determine whether the individual is eligible for the premium tax credit on the Exchange.

## Self-Insured Medical Plan

- All employers with a self-insured medical plan must report.
- Employers under 50 full-time employees (plus full-time equivalents) will be reporting only for §6055 (minimum essential coverage).
- Employers that are “applicable large employers” will report both for §6055 (minimum essential coverage) and §6056 (employer mandate).

## Insured Medical Plan

- Only “applicable large employers’ – those with 50 or more full-time employees (plus full-time equivalents).
- **For insured plans, the insurance carrier reports for §6055 (minimum essential coverage).**
- However, the insurance carrier will not report for §6056 (employer mandate)—that is always the employer’s responsibility.



## 2. Form 1094-C

- Think of this as the cover sheet for the Forms 1095-C.
- **Each member company within the controlled group must file a separate Form 1094-C.**
- Must be one “Authoritative Transmittal” for each member of the controlled group.

## Information Reported

- Name, contact information, and EIN of the employer
- Whether the employer offered MEC to at least 95% of full-time employees for each month in the calendar year
- Total number of employees and full-time employees in each month
- Whether any streamlined reporting provisions apply
  - e.g., Qualifying Offer Method
  - e.g., 98% Offer Method

Form **1094-C**

# Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

CORRECTED

OMB No. 1545-2251

Department of the Treasury  
Internal Revenue Service

▶ Go to [www.irs.gov/Form1094C](http://www.irs.gov/Form1094C) for instructions and the latest information.

# 2020

## Part I Applicable Large Employer Member (ALE Member)

1 Name of ALE Member (Employer)		2 Employer identification number (EIN)	
3 Street address (including room or suite no.)			
4 City or town	5 State or province	6 Country and ZIP or foreign postal code	
7 Name of person to contact		8 Contact telephone number	
9 Name of Designated Government Entity (only if applicable)		10 Employer identification number (EIN)	
11 Street address (including room or suite no.)			
12 City or town	13 State or province	14 Country and ZIP or foreign postal code	
15 Name of person to contact		16 Contact telephone number	
17 Reserved			<input type="checkbox"/>

For Official Use Only



18 Total number of Forms 1095-C submitted with this transmittal . . . . . ▶

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions . . . . .

## Part II ALE Member Information

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member . . . . . ▶

21 Is ALE Member a member of an Aggregated ALE Group? . . . . .  Yes  No

If "No," do not complete Part IV.

### 22 Certifications of Eligibility (select all that apply):

- A.** Qualifying Offer Method     
 **B.** Reserved     
 **C.** Reserved     
 **D.** 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

▶  Signature     
▶  Title     
▶  Date

**Part III ALE Member Information – Monthly**

	(a) Minimum Essential Coverage Offer Indicator		(b) Section 4980H Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Reserved
	Yes	No				
23 All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24 Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25 Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26 Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
27 Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28 May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
29 June	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
30 July	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
31 Aug	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
32 Sept	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
33 Oct	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
34 Nov	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
35 Dec	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

**Part IV Other ALE Members of Aggregated ALE Group**

Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year).

Name	EIN	Name	EIN
36		51	
37		52	
38		53	
39		54	
40		55	
41		56	
42		57	
43		58	
44		59	
45		60	
46		61	
47		62	
48		63	
49		64	
50		65	

## Separate Forms 1094-C for Each ALEM

- Where an ALE has multiple corporate entities in the controlled group, there is an “Aggregated ALE Group”
- Each “Applicable Large Employer Member” (ALEM) in that group (generally each subsidiary or related entity in the controlled group that maintains a separate EIN) must file a separate Form 1094-C
- Required because each ALEM is separately subject to the “A Penalty” analysis

## Required Entries for Each ALEM on the Form 1094-C

- **Part II, Line 21:** Answer “Yes” to question “Is ALE Member a member of an Aggregated ALE Group?”
- **Part III, Column D:** For each month in which the controlled group existed, the “Aggregated Group Indicator” box will be checked
- **Part IV:** This section will be completed listing the names of the other related entities in the controlled group (the other ALEMs) and their EINs

## Forms 1095-C Tied to Each ALEM

- Employees of each ALEM must receive a Form 1095-C with that ALEM’s name/EIN (cannot simply use the parent EIN for all Forms 1095-C)
- If an employee works for more than one ALEM in any month, the ALEM for whom the employee worked the most hours of service will report as the employer

## 2. Form 1095-C

- This form will be completed for **every** full-time employee
- Self-insured plans will also need to report all individuals covered
- Two main topics being reported:
  1. **§6055: Individuals covered by MEC for individual mandate compliance**
    - Self-insured plans only – Employers with fully insured plans leave Part III blank.
    - For insured plans, the insurance carrier uses the Form 1095-B to report MEC.
    - Requires Social Security Number (or at least effort to obtain) for all covered individuals
  2. **§6056: Employer mandate pay or play compliance for §4980H penalties**
    - All ALEs must report on this – both self-insured and fully insured
    - Requires detail as to plan's offer of coverage to all full-time employees

## Information Reported

- Employee name, address, and Social Security Number
- Employer name, address, contact phone number, EIN
- Offer of coverage details for each month of coverage:
  - Was the employee offered coverage for each month?
  - Was the offer affordable and did it provide minimum value?
  - Did the offer include an offer of coverage for dependents?
- Employee share of the monthly employee-only premium for the lowest cost plan option that provides minimum value
- What affordability or other §4980H safe harbor applies:
  - Form W-2 affordability safe harbor
  - Federal poverty line affordability safe harbor
  - Rate of pay affordability safe harbor
  - Non-calendar year transition relief applies for any month
  - Limited non-assessment period

## Part III Coverage Information – Self-insured Plans Only

Self-insured plans only will include MEC coverage information in Part III of the Form 1095-C:

- Names of all covered individuals
- SSNs of all covered individuals
  - Must make “reasonable efforts” to obtain the SSN for all covered individuals
  - Requires **three attempts** to solicit the SSN:
    1. Initial solicitation upon the employee’s election to enroll the dependent (account opened solicitation)
    2. If not received, second solicitation within 75 days of the employee’s election to enroll the dependent (first annual solicitation)
    3. If not received, third solicitation by December 31 of the year following the year the employee elected to enroll the dependent (second annual solicitation)
  - Enter date of birth for any covered individuals who don’t provide the SSN
- Months of coverage (not just offered coverage, but actually enrolled) for all covered individuals in the plan

Form **1095-C**  
Department of the Treasury  
Internal Revenue Service

**Employer-Provided Health Insurance Offer and Coverage**

▶ Do not attach to your tax return. Keep for your records.

▶ Go to [www.irs.gov/Form1095C](http://www.irs.gov/Form1095C) for instructions and the latest information.

VOID

CORRECTED

OMB No. 1545-2251

**2020**

Part I Employee						Applicable Large Employer Member (Employer)					
1 Name of employee (first name, middle initial, last name)			2 Social security number (SSN)			7 Name of employer			8 Employer identification number (EIN)		
3 Street address (including apartment no.)						9 Street address (including room or suite no.)			10 Contact telephone number		
4 City or town		5 State or province		6 Country and ZIP or foreign postal code		11 City or town		12 State or province		13 Country and ZIP or foreign postal code	

Part II Employee Offer of Coverage	Employee's Age on January 1							Plan Start Month (enter 2-digit number):					
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Required Contribution (see instructions)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)													
17 ZIP Code													

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form **1095-C** (2020)

**Part III Covered Individuals**

If Employer provided self-insured coverage, check the box and enter the information for each individual enrolled in coverage, including the employee.

	(a) Name of covered individual(s) First name, middle initial, last name	(b) SSN or other TIN	(c) DOB (if SSN or other TIN is not available)	(d) Covered all 12 months	(e) Months of coverage												
					Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	
18				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
24				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
25				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
26				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
27				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
28				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
29				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
30				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Qualifying Offer Method

An offer providing MEC to one or more full-time employee for all calendar months during the year for which the employee was full-time, provided:

- The offer meets the federal poverty line safe harbor for mainland U.S.; and
- The offer included an offer of MEC to the employee's spouse and dependents (if any)

## Streamlined Effect

### Forms 1095-C, Part II:

- Line 14: Use Code 1A for each month in which the employee received a Qualifying Offer
- Line 15: Must Leave Blank
- Line 16: May Leave Blank (IRS guidance in instructions)

### Substitute Form:

- Permitted where employee received 12-month qualifying offer and not enrolled in self-insured coverage
- Not recommended because the employer must still provide Form 1095-C to the IRS

## 98% Offer Method

For all months during which individuals were employees and not in a limited non-assessment period, the employer offered:

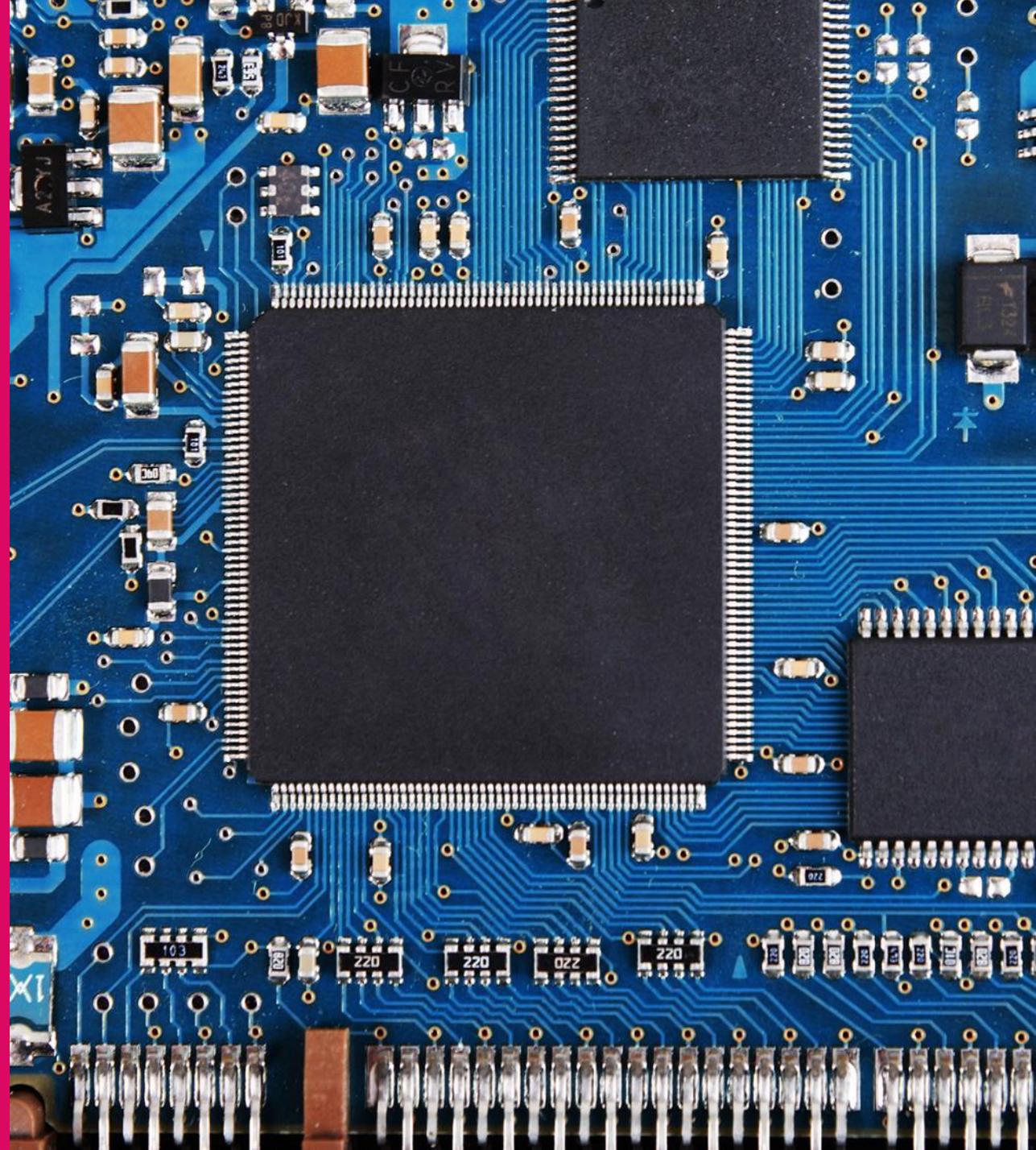
- Affordable/MV coverage to at least 98% of its employees for whom it files a Form 1095-C; and
- MEC to those employees' dependents (children to age 26)

## Streamlined Effect

### Form 1094-C, Part III:

- The employer is not required to complete the full-time employee count section (Column (b))
- Column (b) reports the number of full-time employees for each month in the calendar year
- Still required to complete a Form 1095-C for each full-time employee
- Is it worth it? Little benefit and certifying to 98% may backfire if employees inadvertently missed

# Deadlines and Penalties



### Form 1095-C: To Employees

- Must be furnished by **January 31** of the following year
- Was delayed 30 days for previous years of ACA reporting
- Not likely to receive extension for 2021 ACA reporting completed at the start of 2022

### Forms 1094-C and 1095-C to the IRS

- Due date depends on whether the employer files electronically
- **Paper:** Must be furnished by **February 28** of the following year
- **Electronic:** Must be furnished by **March 31** of the following year
- Employers that file 250 or more returns must file with the IRS electronically

## Prior Years Had Extended Deadlines—IRS Says Not to Expect It This Year

- Prior-year 30-day extensions applied only to the deadline for providing the forms to individuals
- Applied to 2020 Forms 1095-B and 1095-C provided at the beginning of 2021
- Deadlines to file with the IRS remained standard
- Also extends the good faith enforcement safe harbor for 2020 forms filed in 2021 filings to avoid penalties for incorrect or incomplete information (generally \$280 per return)
- **Remember:** *Not likely to extend deadlines or continue good-faith safe harbor for 2021 reporting at start of 2022*

## 2022 ACA Reporting Deadlines (Assuming No Extension)

Forms	Filing Method	Due Date
2021 Forms 1095-B and 1095-C	Furnish to Individuals	Standard: January 31, 2022 <b><i>Extension Not Likely This Year</i></b>
2021 Forms 1094-B and 1094-C (+Copies of Forms 1095-B/1095-C)	File with IRS by Paper	February 28, 2022
2021 Forms 1094-B and 1094-C (+Copies of Forms 1095-B/1095-C)	File with IRS Electronically (Required for 250 or More Returns)	March 31, 2022

### IRS Provides “Section 6055 Furnishing Relief” for Insurance Carriers

- The TCJA effectively repealed the ACA individual mandate by reducing penalties to zero as of 2019.
  - Therefore, the Form 1095-B generally provided by the insurance carrier no longer has a clear reporting purpose under IRC §6055.
- **IRS therefore stated it will not assess penalties on insurance carriers for failure to furnish Forms 1095-B to individuals under two conditions:**
  1. The insurance carrier posts a notice prominently on its website stating that individuals may receive a copy of their Form 1095-B upon request; and
  2. The insurance carrier furnishes a Form 1095-B to any individual upon request within 30 days of the date it receives the request.

### Employers Still Required to Complete ACA Reporting Via Form 1095-C

- The ACA employer mandate remains fully in effect, therefore employers still must furnish and file the Forms 1095-C.
- **Employers sponsoring a self-insured medical plan still must complete Part III of the Form 1095-C for any full-time employee.**
  - Still required even though that information in Part III is related to the §6055 reporting requirements.
- California, New Jersey, Rhode Island, Vermont, and D.C. have state-based individual mandates that rely on the Form 1095-B (fully insured plan) and Part III of the Form 1095-C (self-insured plan) information.
  - May eventually need to develop a state form like the Massachusetts Form MA 1099-HC) for this purpose.

## Same Penalties as Apply for Forms W-2

General penalty is \$560 for each incorrect return (\$280 for return furnished to individual, \$280 for return filed with the IRS).

- Total fine not to exceed \$3,392,000.
- Penalty reduced to \$50 if the corrected return is filed within 30 days after the required filing date—total fine max reduced to \$565,000.
- Penalty reduced to \$110 if corrected by August 1 of the year in which the filing due—total fine max reduced to \$1,696,000.
- For full details, see: [ACA Reporting Penalties](#)

## Special Good Faith Efforts Applied in Previous Years

For the Forms 1094-C and 1095-C filed in previous years, a “good faith efforts” standard applied.

- The IRS would not impose the penalties described above if the employer could show that it made “good faith effort” to comply with the information reporting requirements.
- Applied to incorrect or incomplete information (including SSNs).
- IRS has stated it is unlikely they will provide the good faith safe harbor for 2021 reporting at the start of 2022



# Wrap-Up

Take-aways

## Three Key Points to Remember

1

There are two ACA Employer Mandate Penalties: The A Penalty and the B Penalty. Employers need to ensure they are never in a position where the A Penalty could apply. This penalty is potentially enormous, and employers should never have to “play” and “pay”. Keep track of full-time employees (including contingent workforce) to ensure the 95% threshold is never jeopardized. The B Penalty is much smaller and therefore not a significant concern if it applies to only a few employees.

2

The ACA full-time employee determination is perhaps the most complex area of the Employer Mandate. Although many ACA reporting vendors dismiss it out of hand, the monthly measurement method is a great way to avoid most of this complexity for all or nearly all full-time workforces. Otherwise, the look-back measurement method is generally the better approach to ensure predictability of employees’ full-time status for the stability period (typically aligned with plan year)

3

The ACA reporting exhibition season is over, and now the real games begin. The anticipated end of the IRS’s extended deadlines and good faith safe harbor for all prior years puts a renewed emphasis on ensuring correct and timely completion of the Forms 1094-C and 1095-C. Employers are strongly advised to work with an ACA reporting vendor (payroll, ben admin, stand-alone) to properly address ACA hours tracking (measurement, administrative, stability periods for LBMM) and ACA reporting.



# Content Disclaimer

## The ACA Employer Mandate

The intent of this analysis is to provide the recipient with general information regarding the status of, and/or potential concerns related to, the recipient's current employee benefits issues. This analysis does not necessarily fully address the recipient's specific issue, and it should not be construed as, nor is it intended to provide, legal advice. Furthermore, this message does not establish an attorney-client relationship. Questions regarding specific issues should be addressed to the person(s) who provide legal advice to the recipient regarding employee benefits issues (e.g., the recipient's general counsel or an attorney hired by the recipient who specializes in employee benefits law).

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# Thank You!

**Brian Gilmore**

Lead Benefits Counsel, VP

[brian.gilmore@theabdteam.com](mailto:brian.gilmore@theabdteam.com)



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