

Benefits BRIEF



2023 ACA Reporting

• November 2023 •

The reporting requirements under the Affordable Care Act (ACA) have been in effect since 2015. Many employers are already familiar with the rules. However, some employers, particularly those that have grown in size, may lack clarity regarding their reporting obligations under the law. As the deadlines for the 2023 ACA reporting roll near, it is important to review the basics of reporting, including any changes that may be applicable for the 2023 reporting year.

Basics of Reporting

The ACA created two federal reporting requirements under Internal Revenue Code (Code) Sections 6055 and 6056.

CODE SECTION 6055. Under Code Section 6055, **insurance carriers and self-funded employers** must report to the IRS and to covered individuals that the persons were covered by minimum essential coverage. These entities use Form 1094-B and Form 1095-B (B Forms) to report this information.

CODE SECTION 6056. Code Section 6056 applies to **applicable large employers (ALEs)**¹ subject to the employer mandate or “pay or play” rules. ALEs must report information regarding their offer of health coverage to full-time employees by filing Form 1094-C and Form 1095-C (C Forms) with the IRS, and by distributing a copy of Form 1095-C to their full-time employees. The information on the forms will be used to determine whether the employer is subject to any pay or play penalties under Code §4980H. It will also be used to determine whether individuals are eligible for a premium tax credit on the Exchange.

Which Employers are Required to Report?

ALEs. Whether sponsoring a **fully-insured or self-funded plan** (see separate bullet for small, self-funded employers), employers who are ALEs must comply with the Section 6056 reporting requirements. To be considered an ALE for a calendar year, an employer must have employed,

¹ An ALE is an employer that employed an average of at least 50 full-time employees (including full-time equivalent employees, or full-time employees) on business days during the preceding calendar year.

on average, at least 50 full-time employees including full-time equivalent employees during the **previous** calendar year. All types of employers can be ALEs, including tax-exempt organizations and government entities.

All employees in a controlled group² are counted when determining whether the employer is an ALE. If the **combined total of all full-time and full-time equivalent employees** of all employers within the controlled group meets the threshold, every employer in the controlled group is considered an ALE and is subject to Section 6056 reporting requirements.

SMALL, SELF-FUNDED EMPLOYERS. Small employers (i.e., non-ALEs) that sponsor a self-funded group health plan (**including a level-funded health plan**) must comply with the 6055 reporting requirements by using the B Forms. Note that ALEs that sponsor a self-funded health plan will comply with the reporting requirements under both Code Sections 6055 and 6056 by using the C Forms.

Reporting Forms

1094-B. This form acts as a transmittal form or cover sheet for Forms 1095-B to the IRS. The 1094-B requests only the following information: the filer's name and address, EIN, information for an employer contact, total number of Forms 1095-B transmitted with the Form 1094-B, and a signature, title, and date.

1095-B. This form is used by insurers and small, self-funded employers to provide actual enrollment information of the individual and family members enrolled in minimum essential coverage.

1094-C. This acts as a transmittal form or cover sheet for Forms 1095-C, similar to a W-3. Some information reported on this form includes the basic contact and identifying information of the employer, whether the employer offered minimum essential coverage to at least 95% of its full-time employees for each month of the calendar year, and the total number of employees in each month.

1095-C. If you are an ALE (whether fully insured or self-funded), this form must be completed for every full-time employee, submitted to the IRS, and furnished to each employee. Large self-insured plans will also need to complete this form for any individual enrolled in coverage (i.e., part-time employees). This form requires the employer to detail its offer of coverage to the employee in order to avoid potential employer mandate penalties. As the IRS continues to assess Code 4980H penalties, **it is critical to thoroughly check the coding** of each employee on the form to make sure the information is correct and an accurate representation of each employee.

² All employers treated as a single employer under Internal Revenue Code section 414(b), (c), (m), or (o) are treated as one employer for purposes of determining ALE status.

Deadlines for Filing

The due date for furnishing the 2023 Form 1095-B and 1095-C to individuals is March 1, 2024. Employers can deliver the forms to individuals by mail, in person, or electronically (with consent). The deadline for electronically filing with the IRS is March 31, 2024. However, since this is a Sunday, **electronic returns must be filed by the next business day, which is April 1, 2024.**

Employers can no longer file by paper returns based on 2023 IRS final regulations detailed in our **previous post**. **Now, all employers will be required to file electronically for the 2023 reporting year.** It will be critical for employers who have been filing by paper to engage with a third party vendor to complete the filings electronically. Most employers will not be in a position to perform their own electronic reporting via the **IRS' ACA Information Returns Program** due to the complexity of using the system.

Penalties

If an employer fails to furnish the necessary forms to individuals or files incomplete or inaccurate ACA filing forms with the IRS, the IRS may impose penalties of **up to \$290 per form per failure for forms required to be filed or furnished in 2024.**

Employer Next Steps

ALEs

COVERAGE. Confirm you offered minimum essential coverage that was *affordable and provides minimum value* to all full-time employees in 2023, and select the appropriate safe harbor used to determine the affordability of coverage.

FULLY INSURED. Avoid filing for non-full-time employees if not required (only required to report for non-full-time employees if they were enrolled in a self-insured health plan).

DOCUMENT RETENTION. Maintain records of hire and termination dates, along with documents substantiating compliance with the offer of coverage requirements (e.g. SBCs³, records of eligibility, election and waiver forms, etc.).

OUTSOURCED REPORTING. If working with an ACA reporting vendor or payroll provider, confirm that their system accommodates the updates made to the 2023 Forms. When

³ The summary of benefits and coverage (SBC) is a short document providing simple and consistent information about a health plan's benefits and coverage. The ACA requires health plans and issuers to provide an SBC that is in accordance with the required template.

transitioning to a new vendor or provider, it is critical to receive and maintain all records and data used to generate the past forms before terminating the contract.

STATE MANDATE. If your state has an individual mandate requirement, consult with your ACA reporting vendor to confirm that their system complies with the state's filing requirements.

NON-ALEs

SELF-INSURED & LEVEL-FUNDED PLANS. If you sponsored a self-insured or level-funded group health plan in 2023, make arrangements to comply with the Section 6055 reporting requirements by completing the necessary B Forms.

EMPLOYEE COUNT. If you are close to the 50 full-time, including full-time equivalent, employee threshold, determine your future ALE status for 2024, so you can proactively prepare to meet the ALE reporting requirements the following year.

ADDITIONAL RESOURCES

Instructions

1094-C and 1095-C

1094-B and 1095-B

Forms

1095-C

1095-B