

ACA: FAQs FOR EMPLOYER REPORTING UNDER SECTIONS 6055 AND 6056

RESPONSIBILITY FOR REPORTING

Q1. Forms 1094-B and 1095-B are completed by the insurance carrier for fully insured plans, correct?

A: That's correct. Those forms correlate to the individual mandate. The insurance carrier will generally complete these for a fully insured plan. An applicable large employer (ALE) still has responsibility for completing Forms 1094-C and 1095-C.

Q2. If a company is sold at the end of the calendar year, is the new company responsible for reporting?

A: If the new employer is considered the successor employer, then yes, the new employer has reporting responsibility for the year in which the acquisition occurred.

Q3. What if one of our subsidiary companies with a different Federal Employer Identification Number (FEIN) has fewer than 50 employees? Do we still have to file for that subsidiary?

A: Yes. If they're commonly owned (under common control), all employees of all member employers are counted together to determine size. If the combined group has 50+ full-time employees (FTEs), all members are subject to the employer mandate and reporting, even if they don't have 50+ FTEs on their own.

Q4. I'm at the parent company level and we have several subsidiaries and Forms W-2 issued for all locations under one FEIN. Do I assume the same responsibility for reporting as a single employer would?

A: You don't have to assume the reporting responsibility. If the parent and subsidiaries are under common control (per IRC Sec. 414), each separate entity under the control group – each subsidiary – is responsible for reporting on its own, as is the parent company. The parent and each subsidiary would file a separate Form 1094-C, and each Form 1094-C would be marked as the "authoritative transmittal" for that entity.

However, the parent company could perform reporting on the behalf of its subsidiaries, and that may make more sense if you're already creating and distributing Forms W-2 for those subsidiaries. A parent company generally assumes the liabilities for its subsidiaries anyway, since all profits and losses affect the parent company. So you could do it either way, but the subsidiaries are liable for a failure if you assume the responsibility and fail to complete it properly.

Q5. For staffing agencies that offer coverage on behalf of their clients who are applicable large employers (ALEs), does the staffing agency fill out the ALE's information on the reporting forms, or does the staffing agency pass the information regarding the employees to the ALE for the ALE to place on the ALE's form?

A: The answer depends on which entity is the "common law employer." That determination looks at which entity has more control over the employee. The employer should work with the staffing company to make that determination. Outside counsel may also be needed. If the staffing company provides coverage, it would likely be required to report under 6055 (if self-insured), but the 6056 reporting depends on whether the employer or the staffing company is the common law employer. Employers in this situation should engage outside counsel to assist in determining whether the employer or the staffing agency is the common law employer.

Q6. As a large employer with employer-sponsored insurance coverage, which forms must we complete?

A: If you're a large employer and you sponsor a fully insured plan, then you're subject to 6056 reporting only (Forms 1094-C and 1095-C), and you don't need to worry about Forms 1094-B and 1095-B — the insurer handles those. If you sponsor a self-insured plan, then you're subject to 6055 reporting. As a large employer, you're also subject to 6056 reporting. The rules require you to complete Forms 1094/95-C only (including Part III of Form 1095-C). You wouldn't need to complete Forms 1094/95B.



Q7. As a small employer, which forms are we required to complete?

A: If you're a small employer (fewer than 50 FTEs/equivalents) and sponsor a fully insured plan, there are no reporting obligations, so you're not required to file any forms. If you're a small employer and sponsor a self-insured plan, then Section 6055 reporting applies. Therefore, you must file Forms 1094-B and 1095-B for each covered individual with the IRS and distribute a copy of Form 1095-B to all covered individuals. Beginning in 2020, you can forgo distributing Form 1095-B to individuals as long as you post a notice on your website that the document is available upon request, then fulfill any such request within 30 days.

Q8. Self-insured plans only need to complete Forms 1094-C and 1095-C, correct?

A: The answer depends on the size of the employer. Small employers (fewer than 50 FTEs/equivalents) that are self-insured must complete Forms 1094-B and 1095-B, since only 6055 reporting would apply. Large employers (50+ FTEs/equivalents) that are self-insured are subject to 6055 and 6056, and will combine reporting on Forms 1094-C and 1095-C, although they could use Forms 1094-B and 1095-B for non-employees, such as COBRA participants and retirees.

Q9. We are a self-insured group with just over 50 employees. The employer closed its doors in the middle of the calendar year. What is its responsibility to the employees as far as the Form 1095 reporting requirements for the year in which the company dissolved?

A: There is no known Section 6055 and 6056 reporting relief for an employer that has experienced a complete reduction in workforce and closed its doors (i.e., dissolved). Thus, assuming the employer mandate applied to the employer prior to the termination, the employer would have a filing obligation, similar to its other final federal income, employment or other tax filing obligations.

DETERMINING WHICH EMPLOYEES TO REPORT ON

Q10. Does an employer have to complete a Form 1095-C for an employee who is in an initial look-back measurement period?

A: No, an employee in an initial look-back measurement period – generally used for a variable hour or seasonal employee – is not yet considered an FTE or non-FTE; their full-time status has not yet been determined. Therefore, you wouldn't complete a Form 1095-C for that employee until the employee completes the measurement period and is determined to be an FTE (i.e., averaging 30+ hours per week over the measurement period).

Q11. If an employee only works for 89 days and is therefore ineligible for coverage, as our waiting period is 90 days, do we have to complete a Form 1095-C for that person?

A: No. The employer must provide a Form 1095-C to any employee who had full-time status for any month in the prior calendar year. However, if an employee was not employed for part of the year and/or was in a limited non-assessment period (such as a waiting period or measurement period) for the remainder of the year, then a Form 1095-C is not required.

Q12. What if we have full-time employees who are not benefits eligible, such as temps, seasonal or student workers? Do we still report them if they work 30 hours or more, even though they don't get benefits?

A: It depends. The general rule is that an employer must report on all FTEs (those working 30+ hours per week), regardless of whether they're temporary, seasonal or student workers. But the employer could report that they were in a limited non-assessment period (for the first three months of employment) if they weren't offered coverage. Additionally, if the employer is using look-back measurement periods for those employees, the limited non-assessment period would be the entire initial measurement period, which could be up to a year. Beyond the limited non-assessment period, if the employees are working full-time hours, the employer would report them as FTEs and would indicate that they were not offered coverage.

Q13. For Form 1094-C, Part III, if employees are in their waiting period for benefits, are they excluded in the monthly count until they become eligible?

A: On Form 1094-C, Part III, in Column B, you include all FTEs except those in a waiting period or other limited non-assessment period. In Column C, you include all employees — part-time, full-time, variable or seasonal, including those in a waiting period or other limited non-assessment period.

Q14. We employ some incarcerated persons through a court/work release/safe house situation. Are these individuals counted as employees in the FTE count, and are we required to offer coverage to and report on these individuals?

A: There's no provision under the employer mandate to exclude such employees. If they're employees, they should be counted and offered coverage.

DETERMINING WHICH EMPLOYEES RECEIVE FORMS

Q15. Do we need to distribute a Form 1095-C indicating no months of coverage to employees who don't elect coverage with us?

A: Yes. A Form 1095-C goes to each FTE, regardless of whether the individual was eligible for or enrolled in coverage.

Q16. Do employers need to complete Form 1095-C for part-time employees?

A: Only if the employer sponsors a self-insured plan and part-time employees are covered under the plan. In that case, Section 6055 reporting applies and requires the employer to report all covered individuals. So, if covered under a self-insured plan, the part-time employee is reported on Part III of Form 1095-C. For a large, fully insured plan, 6056 is the only reporting obligation that applies, and it requires only that the employer report on FTEs.

Q17. Do partners in the firm receive 1095-Cs? The partners enroll in a group plan and pay their own premium cost.

A: It depends on the partners' status. Any individual treated as self-employed isn't considered an employee, and partners are generally considered "self-employed." So if the partner receives a Form K-1 rather than a Form W-2, then they wouldn't be given a Form 1095-C under a fully insured plan. Further, they wouldn't be counted when determining the employer's size or trigger a penalty for the employer. However, if the plan is self-insured, the employer must distribute a Form 1095-C to everyone covered under the plan, including a partner or other self-employed owner.

Q18. We carry retirees on our medical insurance. Do we have to complete a Form 1095-C for these individuals even if Medicare is their primary insurer?

A: It depends on whether you're fully insured or self-insured. If you're fully insured, you only have to complete a Form 1095-C for FTEs. Thus, if the former employee is retired and is no longer your employee, you wouldn't give them a form. But if you're self-insured, you have to complete a form for each employee or former employee covered under the plan. So a self-insured plan would give a form to a covered retiree.

Q19. Does every dependent, regardless of age, receive a 1095-C?

A: For ALEs with fully insured plans, the employer is required only to send the FTE (and not dependents) a Form 1095-C. ALEs with self-insured plans must report on all covered individuals, even those who are not common-law employees (e.g., part-time employees, COBRA enrollees, etc.). However, employers can satisfy this requirement by completing Part III of Form 1095-C (which lists all covered individuals, including spouses, domestic partners and dependents), and distributing a copy of that Form 1095-C to the FTE or primary subscriber. Since the FTE/primary subscriber is the individual responsible for enrolling their dependents, the distribution to the FTE/primary subscriber is sufficient to satisfy the requirement.

COBRA

Q20. How do we report an employee who is offered COBRA and enrolls?

A: The answer can be broken down by employer size and type of insurance offered:

- **Large employer, fully insured:** Employer will include the COBRA participant for Section 6056 reporting on Form 1095-C for the year in which the COBRA triggering event occurs, but not in subsequent years. This is only applicable for COBRA participants who are still employed following the COBRA event, such as employees who lose eligibility for benefits as a result of a reduction in hours (i.e., switching from full-time to part-time status). It doesn't apply to employees who have terminated employment. The insurer will include the COBRA participant who terminated employment for Section 6055 reporting on 1094/1095-B forms for any subsequent years in which the individual is not an active employee.
- **Large employer, self-insured:** Employer will include the COBRA participant for Sections 6055 and 6056, but only on Form 1095-C (recommended) for the year in which the COBRA triggering event occurs. Section 6056 reporting ends in the month that an employee terminates employment. Importantly, and in a change from a large employer who is fully insured, the employer must include these participants on reports in the following year, since the reporting would still be required under Section 6055. Subsequent Section 6055 reporting for these non-employees/COBRA participants would generally be on the 1094/1095-B forms.
- **Small employer, fully insured:** Insurer will include the COBRA participant for Section 6055 reporting on Form 1095-B. Section 6056 reporting does not apply.
- **Small employer, self-insured:** Employer will include the COBRA participant (as well as any retiree) for Section 6055 reporting on Form 1095-B. Section 6056 reporting does not apply.

Q21. Do we report on terminated employees who have elected COBRA coverage?

A: An offer of coverage made to a terminated employee via COBRA should not be reported as an offer of coverage on Form 1095-C, Line 14. For a terminated employee, Code 1H (no offer of coverage) should be entered for any month for which COBRA continuation coverage applies. Self-insured employers have to report all covered participants, including COBRA, in Section III of Form 1095-C.

Q22. Do we have to report on a non-employee COBRA beneficiary (i.e., a spouse, domestic partner or dependent) if we're fully insured?

A: Generally, the answer is no. For a fully insured plan, the insurer (rather than the employer) is responsible for reporting via Form 1095-B the information on non-employees who are covered under the plan.

Q23. Does the COBRA premium have to be affordable?

A: No. The ACA requirement to offer affordable coverage only applies to full-time employees. Because COBRA participants are no longer full-time employees, the coverage doesn't have to be affordable.

UNION EMPLOYEES

Q24. Are union employees counted in determining whether there are 50 FTEs/equivalents?

A: Yes, if a union employee is otherwise receiving Form W-2 compensation from an employer, the employer must include them in its calculation to determine employer size and must report them. There's a special code to indicate that a union employee is receiving their coverage from a union plan.

Q25. What if some of our employees are covered under a union plan? What should we expect to receive from the union, and what will we have to submit for these employees?

A: The employer is responsible for reporting on the union employees. However, the administrator of a multiemployer (union) plan may complete the individual 6056 reports (Forms 1095-C) for the employees covered by the collective bargaining agreement and eligible for the multiemployer plan. In other words, the union may complete Form 1095-C for its covered members, and that would satisfy the employer's obligation in regards to those employees. However, the employer remains responsible for completing Form 1095-C on non-union employees and for completing Form 1094-C (the transmittal) on all employees if the union does not complete Forms 1094/1095-C.

DEADLINES AND PENALTIES

Q26. When must Forms 1094/1095-B/C be submitted to the IRS?

A: 2020 data is reported in 2021. Forms should generally go to employees by January 31 of the year following the data. Due to an IRS extension, the 2021 statements (as to 2020 compliance) will need to be provided to FTEs by March 2, 2021. If filing electronically, the forms are due to the IRS on March 31, 2021. If filing by paper, the forms are due to the IRS by March 1, 2021 (as February 28, 2021 is a Sunday).

Q27. What are the penalties if an employer fails to file a form with the IRS or fails to distribute a Form 1095-C to an individual who is entitled to it?

A: IRC Sections 6721 and 6722 contain penalties for employers that fail to execute their Sections 6055 and 6056 reporting requirements. The penalty is generally \$280 per failure per year, with a maximum penalty of \$3,426,000. According to the instructions, no reporting penalties will apply where the employer is using good faith efforts to comply. This is generally understood to mean that the employer must have demonstrated some effort to comply (such as by actually determining FTE status and filing the appropriate forms with the IRS), but that the IRS will not penalize the employer if there are some mistakes in the codes or other information required to be on the forms. In addition, employers that willfully ignore their filing obligations could be subject to a \$560 penalty per form (\$280 for not providing the individual statement and \$280 for not filing with the IRS).

Q28. What are the implications of this reporting for entities that aren't normally required to report to the IRS, such as tribal governments, that are considered large employers by definition?

A: All types of employers are subject to the employer mandate and reporting requirements, including nonprofits, governments, tribes, churches and others. If an employer fails to comply with the employer mandate, Penalty A and Penalty B assessments could also apply. For further information about Penalties A and B, see the PPI publication [ACA: Employer Mandate Penalties and Affordability](#).

MISCELLANEOUS QUESTIONS

Q29. What if we were fully insured for one month, and the remaining 11 months, we were self-insured? Would we have to complete two sets of forms?

A: Large employers would complete only one set of forms: Forms 1094-C and 1095-C. Part III of Form 1095-C would not be completed for the fully insured month but would be completed for all of the self-insured months.

Q30. Is an HRA integrated with a medical plan considered a stand-alone self-insured plan for reporting purposes?

A: Employers that sponsor a group medical plan along with an HRA should understand their reporting responsibility, as follows:

- An employer that sponsors a fully insured medical plan and an HRA has no Section 6055 reporting requirement for those employees that elected coverage under both plans. If an employee has waived coverage under the medical plan but has elected the HRA (for example, because they're enrolled in the medical plan of a spouse or domestic partner), the employer has a Section 6055 reporting requirement for the HRA coverage for that employee. An employer with fewer than 50 FTEs, including equivalents, would report the HRA coverage on Form 1095-B, while an employer with 50 or more FTEs (including equivalents) would report the HRA coverage on Part III of Form 1095-C.
- An employer that has a self-insured medical plan and an HRA has a Section 6055 reporting requirement for any employee who elected coverage under either plan. Obviously, they have a reporting requirement for any employee who elected coverage under the self-insured medical plan. They must also remember to report any employee who waived the medical coverage but elected the HRA (for example, because they're enrolled in the medical plan of a spouse or domestic partner). An employer with fewer than 50 FTEs (including equivalents) would report the HRA coverage on Form 1095-B, while an employer with 50 or more FTEs (including equivalents) would report the HRA coverage on Part III of the Form 1095-C.

Q31. How do we handle dependents who don't have Social Security numbers (SSNs)?

A: Employers may use the dependent's date of birth instead of the SSN. However, employers must document at least three requests for the SSN — at initial enrollment, in December of the first year of enrollment and in December of the second year of enrollment. Employers should take steps to obtain dependent SSNs and then use the date of birth if the employee doesn't respond.

Q32. We have three other sites with one or two employees, but all sites are part of the same entity. Can we combine these for purposes of fulfilling reporting obligations under Sections 6055 and 6056?

A: If the employer maintains separate divisions or sites within the same ALE member, then combined reporting is allowed. But if the sites are separate ALE members, they must file separately from the other ALE members by filing their own Form 1094-C and completing a Form 1095-C for each of their full-time employees.

RESOURCES

[IRS FAQs on Section 6055 Reporting](#)

[IRS FAQs on Section 6056 Reporting](#)

About PPI

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