

Health Care Reform: General 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 complete these for a fully insured plan. The employer still has responsibility for 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, they'll have 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), you have to count all employees of all member employers 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. 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 would be marked as the "authoritative transmittal" for that entity.

However, the parent could perform reporting on the subsidiaries' behalf, 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 took on the obligation and failed 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 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, though, you're also subject to 6056 reporting. The rules require you to complete 1094/95-C only. You wouldn't need to do 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.

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

A: Small employers (fewer than 50 FTEs/equivalents) who 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 have a self-insured group with just over 50 employees. The employer closed its doors July 1, 2016. What is its responsibility to the employees as far as the 1095 reporting requirements for the 2016 year?

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 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's 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 fill out a Form 1095-C for that employee until he or she 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 wait 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 2016. There is one exception. 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 is not required.

Q12. What if we have employees that are full time but not benefit eligible, such as temps, seasonal or student workers? Do we still report on 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 would 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 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, 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. Do these individuals get counted as employees in the FTE/equivalent 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. There would be no need to report on a part-time employee.

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 partner's 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 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 they're retired and no longer working, they wouldn't get 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. However, employers can satisfy this requirement by completing Part III of Form 1095-C (which lists all covered individuals, including spouses and dependents), and distributing a copy of that Form 1095-C to the FTE. Since the FTE is the individual responsible for enrolling his or her dependents, the distribution to the FTE is sufficient to satisfy the requirement.

COBRA**Q20. How do we report an employee who's 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 COBRA participant for Section 6056 reporting on Form 1095-C for the year in which COBRA triggering event occurs, but not in subsequent years. This is only applicable for COBRA participants who are still employed following the COBRA event who, for example, switched from full time to part time and lost eligibility. It doesn't apply to employees who have terminated employment. The insurer will include the COBRA participant for 6055 reporting on B forms for any subsequent years in which the individual is not an active employee.
- **Large employer, self-insured:** Employer will include 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 the above, the employer would still include these participants on reports in the following year, since it would still be required under 6055. Subsequent 6055 reporting for these non-employees/COBRA participants would generally be on the B forms.

- **Small employer, fully insured:** Insurer will include COBRA participant for Section 6055 reporting on Form 1095-B. Section 6056 reporting does not apply.
- **Small employer, self-insured:** Employer will include retirees and COBRA participants 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 Line 14. For a terminated employee, Code 1H (no offer of coverage) should be entered for any month for which the offer of COBRA continuation coverage applies. If you're self-funded, you have to report all covered participants, including COBRA, in Section III of the 1095-C.

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

A: Generally, the answer is no. For a fully insured plan, information on non-employees who are covered under the plan would be the responsibility of the insurer, via Form 1095-B.

Q23. Does the COBRA premium have to be affordable?

A: No. The requirement to offer affordable coverage only applies to employees who work full-time hours. If an employee is on COBRA coverage, they're no longer full time and 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 they're otherwise an employee receiving W-2 compensation, you must include them in your calculation to determine size and report them. There's a special code to indicate that they're getting 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 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 would still be responsible for Form 1095-C on non-union employees and Form 1094-C (the transmittal) on all employees if the union does not complete them.

DEADLINES AND PENALTIES

Q26. When must these forms be submitted to IRS?

A: You'll report 2016 data in 2017. Forms normally go to employees by Jan. 31 of the year following the data. In 2017, a 30-day extension to provide the statements was given. The 2017 statements (as to 2016 compliance) will need to be provided to FTEs by March 2, 2017. If filing electronically, the forms are due to the IRS on March 31, 2017. If filing by paper, the forms are due to the IRS by Feb. 28, 2017.

Q27. What are the penalties if you fail to file a form with the IRS or fail to distribute a Form 1095-C to an individual who's entitled to it?

A: IRC Sections 6721 and 6722 contain penalties for employers that fail to execute their 6055 and 6056 reporting. The penalty is generally \$260 per failure per year, with a maximum penalty of \$3,178,500. For 2015 and 2016 reporting only (due in early 2016 and early 2017, respectively), no reporting penalties will apply where the employer is using good faith efforts to comply. We think that means the employer must be making some effort to comply (i.e., 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 \$520 penalty per form (\$260 for not providing the individual statement and \$260 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, 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.

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: Assuming you're a large employer, you would complete only one set of forms: 1094-C and 1095-C. For the fully insured month you would not complete Part III of Form 1095-C, while for the self-insured months, you would.

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

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

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

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

A: You may use the date of birth instead of the SSN. However, you must document at least three requests for the SSN — at initial enrollment, December of the first year of enrollment and December of the second year of enrollment. Employers should take steps to try and 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?

A: If they're 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.

Q33. What if we have 50-99 FTEs and use a non-calendar-year plan?

A: Employers with 50-99 FTEs are subject to the employer mandate beginning on the date of their plan year in 2016, assuming certain conditions are met. (See your advisor for more details.) In other words, instead of being subject to the mandate on Jan. 1, 2016, they'll be subject to it on their plan year start date in 2016. Where reporting is concerned, 50-99 groups with non-calendar-year plans are still responsible for reporting for 2016, as transition relief doesn't delay the reporting requirements. So, although the mandate itself is delayed, a 50-99 FTE employer with a non-calendar year plan would still have to report for every month in 2016.

ADDITIONAL RESOURCE

IRS Notice 2016-70: <https://www.irs.gov/pub/irs-drop/n-16-70.pdf>

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