How to Avoid an ACA Reporting Penalty

And What to Do if You Get One

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Agenda

- IRS Enforcement of Employer Mandate
- Steps to Challenge Proposed Assessment
- Common Reporting Mistakes
- Areas to Review
- Tips

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IRS Enforcement of Employer Mandate

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IRS Enforcement – "A" Penalty

Applies when:

- A large employer fails to offer coverage to at least 95% (70% in 2015) of full-time employees and their dependent children, and at least one full-time employee receives a premium tax credit to help with the cost of coverage.
- The annual penalty for failing to meet this target is $2,000 per full-time employee, less the first 30 (first 80 in 2015), indexed annually.

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IRS Enforcement – "B" Penalty

- A large employer offers coverage to at least 95% (70% in 2015) of full-time employees and their dependent children, but at least one full-time employee receives a premium tax credit to help with the cost of coverage that was not offered, was inadequate, or was unaffordable.
- The penalty for failing to meet this target is $3,000 per full-time employee who receives a premium tax credit and no safe harbor applies.

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IRS Enforcement

4980H(a) Penalty	4980H(b) Penalty
2015 $2,080 annually or $173.33/mo.	2015 $3,120 annually or $260.00/mo.
2016 $2,160 annually or $180.00/mo.	2016 $3,240 annually or $270.00/mo.
2017 $2,260 annually or $188.33/mo.	2017 $3,390 annually or $282.50/mo.
2018 $2,320 annually or $193.33/mo.	2018 $3,480 annually or $290.00/mo.
2019 $2,500 annually or $208.33/mo.	2019 $3,750 annually or $312.50/mo.

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Date:
02/13/2018
Tax year:
2016
Employer ID number:
12-34567
Person to contact:
Tax Mann
Employee ID number:
5021548A
Contact telephone number:
(212) 555-1234
Contact e-fax number:
(212) 555-3456
Response date:
03/05/2018

Available at https://www.irs.gov/pub/notices/226-J_letter.pdf

ESRP Summary Table

Information Reported to IRS

Month	a. Form 1094-C, Part III, Col (a) Minimum essential coverage offer indicator offered to at least [70% or 95%]	b. Form 1094-C, Part III, Col (b) Full-time employee count for ALE member	c. Allocated reduction of full-time employee count for IRC Section 4980H(a)	d. Count of assessable full-time employees with a PTC for IRC Section 4980H(a)	e. Count of assessable full-time employees with a PTC for IRC Section 4980H(b)	f. Applicable IRC Section 4980H provision	g. Monthly ESRP amount
January	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
February	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
March	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
April	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
May	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
June	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
July	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
August	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
September	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
October	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
November	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
December	[Yes / No]	[xxxxx]	[xxxxx]	[xxxxx]	[xxxxx]	[4980H(a) / 4980H(b)]	$0
						Total Proposed ESRP	$0

Available at https://www.irs.gov/pub/notices/226-J_letter.pdf

Form **14765** (April 2017)

Department of the Treasury - Internal Revenue Service

Employee Premium Tax Credit (PTC) Listing

Any month not highlighted is a month that the employee received a PTC and no safe harbor or other relief from the ESRP was applicable. The employee is an assessable full-time employee for that month.

Employer name	Employer ID number	Tax year

Employee Name *(last, first)*	SSN *(last 4 digits)*	All 12 months Indicator Codes *(Form 1095-C, lines 14 and 16 combined)*	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Additional Information Attached
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Catalog Number 66863V www.irs.gov Form **14765** (4-2017)

Available at https://www.irs.gov/pub/irs-pdf/f14765.pdf

Form **14765** (April 2017)

Department of the Treasury - Internal Revenue Service

Employee Premium Tax Credit (PTC) Listing

Any month not highlighted is a month that the employee received a PTC and no safe harbor or other relief from the ESRP was applicable. The employee is an assessable full-time employee for that month.

Employer name	Employer ID number	Tax year
Township Company	87-8787878	2016

Employee Name *(last, first)*	SSN *(last 4 digits)*	All 12 months Indicator Codes *(Form 1095-C, lines 14 and 16 combined)*	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Additional Information Attached
Noname,Jesse Noname, Jesse	9845		1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	1H/	☐
															☐

Available at https://www.irs.gov/pub/irs-pdf/f14765.pdf

Steps to Respond to Proposed Penalty

Steps to Respond

Step 1:
Employer receives IRS Letter 226-J and Form 14765 (Employee Premium Tax Credit Listing)

Step 2:
Employer responds using IRS Form 14764 (Employer Response); makes corrections on Form 14765 and attaches additional documentation (as necessary)

Step 3:
IRS responds using Letter 227

Steps to Respond

Step 4:
Optional pre-assessment conference w/ IRS Office of Appeals

Step 5:
Notice CP 220J issued if IRS determines an assessment will be made

Step 6:
Employer can submit questions, request abatement, or challenge the assessment in court

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Common Reporting Mistakes

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What causes mistakes?

- Passage of ACA required employers to develop new processes to comply
- Complexity of IRS guidance
- Technology and/or software snafus

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What causes mistakes?

- Data presents challenges
- Bad data in = bad data out
- Necessary information may be in multiple systems
  - Hours in a payroll system
  - Offer information in a benefits administration system, paper file or elsewhere
  - Enrollment data may only be available via the carrier; reliance on payroll deductions presents challenges

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What causes mistakes?

- Different timeframes for different purposes
  - Measurement period for lookback
  - Offer and coverage information for tax year
  - Non-calendar plan years
    - Multiple measurement periods
    - Offer and coverage information for multiple medical plan years
- New hires, terminations, position changes, dropping/picking up new coverage

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What causes mistakes?

- Breaks in employment present special challenges
- Summer employment breaks for employees of educational organizations require special handling
- 13 week (26 weeks education) minimum break in service before a rehired employee can be treated as “new” for measurement and stability period purposes

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What causes mistakes?

Unique employee populations can also create complexity. Examples include:

- Substitutes
- Adult school
- Outdoor ed
- Interns
- Paraprofessionals
- Head Start
- Life Guards

Areas to Review

Areas to Review

- Did you offer coverage to 95% (70% in 2015) of your full-time workforce?
- Did you answer "Yes" on Part III, Column A of Form 1094-C?

	Information Re
Month	a. Form 1094-C, Part III, Col (a) Minimum essential coverage offer indicator offered to at least [70% or 95%]
January	Yes
February	Yes
March	Yes
April	Yes
May	Yes
June	Yes
July	No
August	No
September	No
October	No
November	No
December	No

Areas to Review

- Did you enter the correct full-time employee count on Part III, Column B of Form 1094-C?

	Information Reported to IRS	
Month	a. Form 1094-C, Part III, Col (a) Minimum essential coverage offer indicator offered to at least [70% or 95%]	b. Form 1094-C, Part III, Col (b) Full-time employee count for ALE member
January	Yes	115
February	Yes	98
March	Yes	120
April	Yes	105
May	Yes	108
June	Yes	112
July	No	262
August	No	264
September	No	268
October	No	265
November	No	261
December	No	263

Areas to Review

- Did you claim all applicable transition relief on Form 1094-C?
  - 50-99 midsize employer relief
  - Large employer relief
  - Non-calendar plan year relief
- For the 2015 plan year, employers with 100 or more full-time employees (including full-time equivalents) could claim large employer transition relief. Using this transition relief, if an ESRP is owed, it is calculated after reducing the ALE's full-time employee count by 80 instead of 30.

c. Allocated reduction of full-time employee count for IRC Section 4980H(a)
30
30
30
30
30
30
30
30
30
30
30
30

Areas to Review

- Did you send Form 1095-C to employees who weren't supposed to receive one?
- As a general rule, only full-time employees should be issued a Form 1095-C (unless you sponsor a self-insured plan or are eligible to use the 98% offer method).

Areas to Review

Potential issues with “over-reporting” include:
- Wrong employees receive Form 1095-C
- Incorrect full-time employee count on Form 1094-C
- Penalty calculation may be impacted
- IRS reports will be incorrect

FAQ: the employees listed on Form 14765 were not full-time and should never have received a form. What do we do?

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Areas to Review

- Did you remember to enter the applicable safe harbor on Line 16 of the employee’s Form 1095-C?
  - In some cases, there was no offer to a full-time employee, or there was an offer, but coverage was not affordable
  - If a safe harbor or other relief applies, the employer may be protected from an ESRP assessment
  - Leaving off the applicable safe harbor code could result in a penalty assessment

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Areas to Review

Did you enter the correct offer code on Line 14 of the Form 1095-C?

Verify accuracy carefully. Certain codes are automatic penalty triggers if a full-time employee receives a Premium Tax Credit and no safe harbor or other relief applies:
- Code 1H (no offer of coverage)
- Codes 1B, 1D, and 1J (offer that did not include dependent children)
- Code 1F (offer of coverage that did not meet the ACA’s “minimum value” adequacy standard)

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Areas to Review

Missing Line 16 Safe Harbor Codes:

- Code 2A (not employed)
- Code 2B (not full-time)
- Code 2C (enrolled in the coverage offered)
- Code 2D (permissible waiting period or initial measurement period for a new part-time, seasonal or variable hour employee)
- Code 2E (multiemployer interim rule relief for certain union plans)
- Codes 2F, 2G, and 2H (affordability safe harbors)
- Code 2I (2015 non-calendar plan year transition relief)

For more information: https://www.irs.gov/pub/irs-pdf/i109495c.pdf

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Tips

- Don’t panic
- Engage qualified tax and legal counsel
- Request an extension if necessary
- Respond timely to all correspondence

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Employer Responsibilities

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Did You Forget to File?

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IRS Letter 5699

- Inquiry letter from IRS to employers to verify the reason no Forms 1094-C and 1095-C were filed
- Will indicate the tax year(s) in question
- Informs employer that the IRS believes the employer may have been an Applicable Large Employer (ALE) yet no reporting was received by IRS
- Includes a discussion of the rules
- 30 days to respond

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5 Possible Responses to Letter 5699

- The employer was an ALE for the tax year(s) in question but filed its Forms 1095-C under a different entity;
- The employer was an ALE for the tax year(s) in question and is including the Forms 1094-C and 1095-C with its response to the Letter 5699 (note this is only an option if the employer has fewer than 250 Forms 1095-C);
- The employer was an ALE for the tax year(s) in question and will be filing the Forms 1094-C and 1095-C with the IRS by a specified date (not more than 90 days from the date on the Letter 5699);
- The employer was not an ALE for the tax year(s) in question; or
- Another reason with a statement explaining why the employer has not filed the Forms 1094-C and 1095-C and the actions the employer plans to take to remedy the situation.

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Next Steps and Tips

- First step is to determine whether or not the employer was an ALE for the tax year(s) in question
- Controlled group rules apply when calculating ALE status
- Review rules for calculating ALE status
- Review the IRS transition relief for an employer determining ALE status for tax year 2015
- Determine whether the Forms 1095-C were filed with a different ALE member in the controlled group (when applicable)
- Consult with legal counsel for assistance

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Did You Report Late or Incorrectly?

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Potential Penalties for Incorrect Reporting

- Penalties can be assessed for up $270 per return (per 1095-C) not filed with the IRS
- Penalties can also be assessed for up to $270 per return (per 1095-C) for not timely furnishing to the employee
- For 2015-2018, the government has elected not to impose penalties for incorrect or incomplete information on employers that could demonstrate they made a good-faith effort to comply with the reporting requirements. This good-faith effort does not extend to employers who fail to file their return, or who failed to meet the deadline for furnishing a Form 1095 to their employees. It is important to note that this good-faith standard may not be extended in future years.

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How To Proactively Prevent Problems

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Notice of Coverage Options

- Fill out completely, including Part B
- Provide to all new hires at time of hire
- Consider updating yearly and make available to all employees
- Informs employees of whether they were offered affordable coverage
- Identifies employee required contribution to self-only coverage under the lowest cost plan meeting ACA standards

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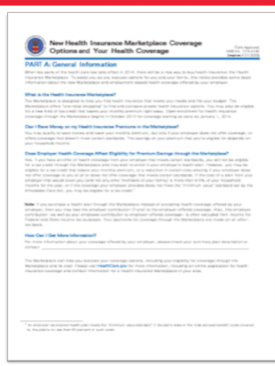
New Health Insurance Marketplace Coverage Options and Your Health Coverage

PART A: General Information

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Marketplace Notices

- This notification informs you that an employee was found eligible for a premium tax credit (PTC)
- Employee is not eligible for PTC if adequate, affordable coverage is offered by the employer
- Employer may appeal on only one ground: that coverage was offered, met ACA standards, and was affordable under ACA rules
- Employer may not appeal for any other reasons (e.g., employee was part-time, not employed, etc.)

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Focus on Employee Education

- Help employees understand the health coverage offered to them, how much it costs, and how an employer offer impacts Marketplace premiums
- Better educated employees are less likely to give incorrect information to the Marketplace
- Better educated employees will be better consumers of health care
- If you are collectively bargained, better educated employees make better bargaining decisions

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Pay Attention to New Hires

- “Reasonable Expectations” at the time of hire decide how you must treat an employee for ACA purposes
- Look at all facts and circumstances of the position the employee is being hired into
- If “reasonably expected” to work on average 30 or more hours per week/130 hours per month, treat employee as full-time
- If hours are unpredictable, seasonal, or known to be less than 30 or more hours per week/130 hours per month, treat employee as part-time, seasonal, or variable hour

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Develop a Process to Monitor New Hires at Least Monthly

- If using the look-back measurement method, ACA rules require that part-time, seasonal and/or variable hour employees be tested over an 11 to 12 month measurement period following the date of hire in order to identify status for ACA purposes
- This Initial Measurement Period can start on first of the month following the date of hire (or on date of hire if start date is the first), allowing you to group employees by month
- Then, track total hours over this 11 to 12 month Initial Measurement Period to determine each employee's average
- Use 1 to 2 month Administrative Period to identify if the employee must be treated as full-time for a 12 month stability period

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Develop a Process to Monitor New Hires at Least Monthly

- Many employers have mastered the ongoing Standard Measurement Period applicable to all employees, but forget about part-time, seasonal, and variable hour new hires
- TIP: develop a process to remind your team to review closing Initial Measurement Periods at the same time each month
- Decide if you will offer coverage
- Decide how much you will contribute
- Decide how the offer will be documented

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Document and Communicate ACA Decisions

- Turnover happens
- Plan for your successor to take over your role when you get promoted
- Ensure that everyone knows:
  - What method your employer uses to identify full-time employees
  - When coverage is to be offered
  - How much employees will be required to pay
  - How offers will be communicated and recorded

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Thank you!

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www.HCReducation.com

Contact us: 877-302-5073 or HCR@americanfidelity.com

This is only a brief summary that reflects our current understanding of select provisions of the law, often in the absence of regulations. All of the interpretations contained herein are subject to change as the appropriate agencies publish additional guidance.

American Fidelity Administrative Services, LLC does not provide tax or legal advice. While we're happy to provide you with this general information, given the complexity of these rules, we encourage you to contact your tax or legal counsel about how the new requirements apply to your specific plans or situation.

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