

AFFORDABLE CARE ACT 2023 NEW RULES

DON'T GET CAUGHT OFF GUARD



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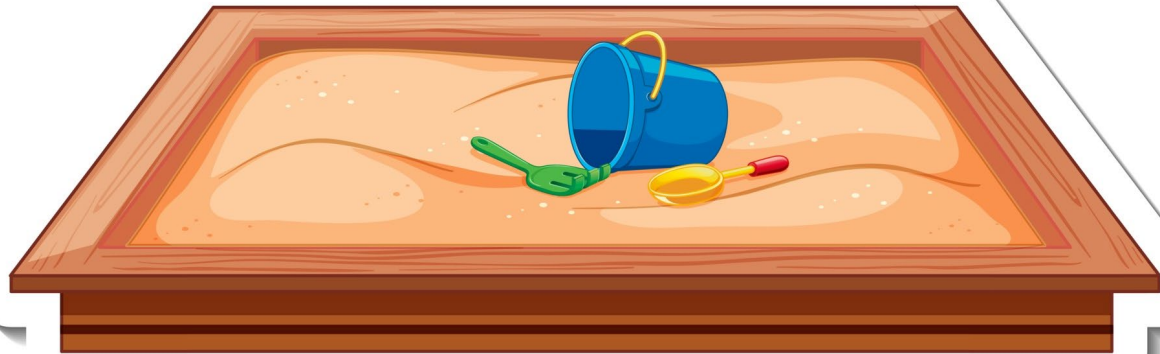
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Disclaimer

The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.

Finally, this presentation is current as of the date of presentation, and the information contained herein is subject to change.



Don't forget about Controlled Groups...

REMEMBER THAT Certain employer aggregation rules apply in determining whether an employer is an ALE subject to the employer information reporting provisions. Under those rules, 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 FTE calculation and determining ALE status. The employers that comprise the Aggregated ALE Group are each referred to as ALE Members. Source: <https://www.irs.gov/affordable-care-act/employers/information-reporting-by-applicable-large-employers>

ACA DETERMINATION OF ALE (and Non-ALE) STATUS

ALE CALCULATION TOOL USING LAST CALENDAR YEAR EMPLOYEES AND HOURS FOR WHICH PAY IS RECEIVED



Row #	FTE Formula	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
1	Total EE Count working 120+ hrs.	38	34	39	37	43	43	44	46	45	48	53	54	
2	Combined EE hrs. working less than 120 hrs.	700	878	788	976	685	814	860	640	812	710	574	671	
3	Divide Row 2 by 120	5.833	7.317	6.567	8.133	5.708	6.783	7.1667	5.33	6.767	5.9167	4.782	5.592	
4	Add Rows 1 & 3 together for FTE Count	43.833	41.317	45.567	45.133	48.708	49.783	51.167	51.33	51.767	53.917	57.782	59.592	599.900

Next steps: Add ALL 12 months Total FT and FTE count and divide by 12 to determine average monthly FT and FTE Count for entire year. **Round the final number down** to a whole number to determine your ALE status.

599.900

/ 12 =

49.992

Rounded down to 49 FT and FTEs

Applicable Large Employer (ALE): Single employer or group of related employers who employed an average of at least 50 full-time employees (including FT equivalent employees) in the **prior** calendar year.

Employer Mandate: Offer Minimum Essential health coverage to at least 95% of full-time employees & dependents – 4980H(a) and offer minimum value/affordable coverage to full-time employees – 4980H(b).

ALEs who fail to comply risk exposure to employer shared responsibility penalties (Section 4980H).

Health Coverage Reporting: **All ALE's** must report to the IRS by completing Forms 1094-C/1095-C and distributing to employees by due date and filing with the IRS by March 31. ALEs who fail to comply are subject to a failure to file penalty of up to \$310 per form.

Current State of 2023 Reporting

Where are we now?

- Furnishing deadline of Friday, March 1, 2024.
- Paper filing deadline of Wednesday, February 28, 2024 for those with less than 10 total federal forms
- Electronic filing deadline of Monday, April 1, 2024 without an 8809 extension.
- Good faith relief first expired with 2021 reporting and continues to be unavailable.
- Pay attention to any IRS correspondence sent before due dates and stay out of the collections department. The CP unit is not nice.
- All employers with more than 10 federal forms due are required to file electronically with the IRS all forms (1099, W2, 1095) – See dates above

ACA Reporting Obligations



ACA REPORTING OBLIGATIONS: DATA SIMPLIFIED WORKING WITH ETC

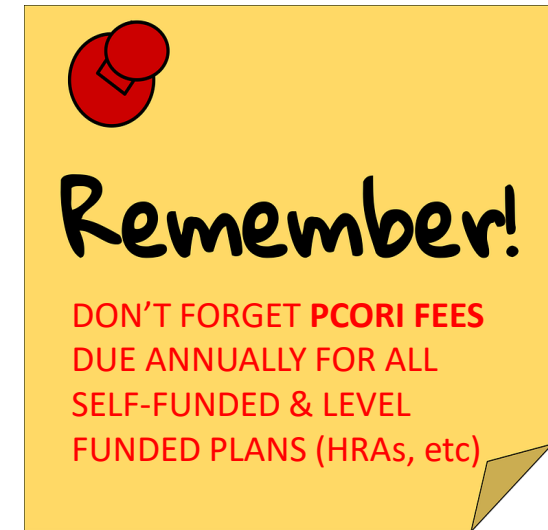
EMPLOYER TYPE	FUNDING TYPE	FORMS REQUIRED	EMPLOYER REPORTING REQUIREMENTS	WHERE TO FIND THE INFO TO PREPARE FORMS THAT WILL GO TO THE IRS
SMALL EMPLOYER (Non-ALE <50 FTE)	FULLY INSURED	1095B – Carrier will handle the obligation	n/a	n/a
SMALL EMPLOYER (Non-ALE <50)	LEVEL FUNDED / SELF FUNDED	1094 / 1095 B SERIES	1095-B FORM *FILED ELECTRONICALLY	1a. Carrier enrollment report indicating coverage for each month; OR 1b. Enrollment platform report with dependent information
LARGE EMPLOYER (ALE >50)	FULLY INSURED	1094 / 1095 C SERIES	1095-C FORM, PART I & II *FILED ELECTRONICALLY	1a. Payroll System roster information that matches W2s. (full SSN, first and last name, address, hire and term date) 2a. Carrier enrollment report for employees indicating coverage for each month; OR 2b. Enrollment platform report for employees 3a. OE Benefit Guide distributed to EE; OR 3b. Account Review with ETC
LARGE EMPLOYER (ALE >50)	SELF FUNDED	1094 / 1095 C SERIES	1095-C FORM, PART I, II & III *FILED ELECTRONICALLY	1a. Payroll System roster information that matches W2s. (full SSN, first and last name, address, hire and term date) 2a. Carrier enrollment report with dependent info indicating coverage for each month; OR 2b. Enrollment platform report with dependent info 3a. OE Benefit Guide distributed to EE; OR 3b. Account Review with ETC

*FILED ELECTRONICALLY – For aggregate form count of W-2, 1099, 1095 over 10, must use electronic filing rules.

1094 = IRS TRANSMITTAL FORM (electronic filing required for 10+ federal forms (Federal forms includes 1099, W2, & 1095 combined))

1095 = EMPLOYEE STATEMENTS

Note: SMALL EMPLOYERS that are part of a controlled group as defined by ACA and the IRS with 50+ Full Time Equivalents (FTEs) combined will default to APPLICABLE LARGE EMPLOYER.



Final ALE Instructions Confirm

Electronic Filing



If you are required to file 10 or more information returns during the year, you must file the forms electronically. The 10-or-more requirement applies in the aggregate to certain information returns that are original or corrected returns.

2023

Instructions for Forms 1094-C and 1095-C



Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, and Form 1095-C, Employer-Provided Health Insurance Offer and Coverage, and the instructions, such as legislation enacted after they were published, go to [IRS.gov/Form1094C](https://www.irs.gov/Form1094C) and [IRS.gov/Form1095C](https://www.irs.gov/Form1095C).

What's New

The electronic-filing threshold for information returns required to be filed on or after January 1, 2024, has been decreased to 10 or more returns. See [Electronic Filing](#), later.

Additional Information

For information related to the Affordable Care Act, visit [IRS.gov/ACA](https://www.irs.gov/ACA). For the final regulations under section 6056, Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans, see T.D. 9661, 2014-13 I.R.B. 855, at [IRS.gov/irb/2014-13_IRB/ar09.html](https://www.irs.gov/irb/2014-13_IRB/ar09.html). For the final regulations under section 6055, Information Reporting of Minimum Essential Coverage, see T.D. 9660, 2014-13 I.R.B. 842, at [IRS.gov/irb/2014-13_IRB/ar08.html](https://www.irs.gov/irb/2014-13_IRB/ar08.html) and T.D. 9970, 2023-02 I.R.B. 311, at [IRS.gov/irb/2023-02_IRB](https://www.irs.gov/irb/2023-02_IRB). For the final regulations under section 4980H, Shared Responsibility for Employers Regarding Health Coverage, see T.D. 9655, 2014-9 I.R.B. 541, at [IRS.gov/irb/2014-9_IRB/ar05.html](https://www.irs.gov/irb/2014-9_IRB/ar05.html). For answers to frequently asked questions regarding the employer shared responsibility provisions and related information reporting requirements, visit [IRS.gov](https://www.irs.gov).

For information related to filing Forms 1094-C and 1095-C electronically, visit [IRS.gov/AIR](https://www.irs.gov/AIR). For FAQs specifically related to completing Forms 1094-C and 1095-C, go to [IRS.gov/Affordable-Care-Act/Employers/Questions-and-Answers-about-Information-Reporting-by-Employers-on-Form-1094-C-and-Form-1095-C](https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-about-Information-Reporting-by-Employers-on-Form-1094-C-and-Form-1095-C).

report information about each employee to the IRS and to the employee. Forms 1094-C and 1095-C are used in determining whether an ALE Member owes a payment under the employer shared responsibility provisions under section 4980H. Form 1095-C is also used in determining the eligibility of employees for the premium tax credit.

ALE Members that offer employer-sponsored, self-insured coverage also use Form 1095-C to report information to the IRS and to employees about individuals who have minimum essential coverage under the employer plan.

Who Must File

An ALE Member must file one or more Forms 1094-C (including a Form 1094-C designated as the Authoritative Transmittal, whether or not filing multiple Forms 1094-C), and must file a Form 1095-C for each employee who was a full-time employee of the ALE Member for any month of the calendar year. Generally, the ALE Member is required to furnish a copy of the Form 1095-C (or a substitute form) to the employee.

An ALE Member is, generally, a single person or entity that is an Applicable Large Employer, or if applicable, each person or entity that is a member of an Aggregated ALE Group. An Applicable Large Employer, generally, is an employer with 50 or more full-time employees (including full-time equivalent employees) in the previous year. For purposes of determining if an employer or group of employers is an Applicable Large Employer, employers under common control (an Aggregated ALE Group) are aggregated together. If the Aggregated ALE Group, taking into account the employees of all ALE Members in the group, employed on average 50 or more full-time employees (including full-time equivalent employees) on business days during the preceding calendar year, then the Aggregated ALE Group is an Applicable Large Employer and each separate employer within the group is an ALE Member. Each ALE Member is required to file Forms 1094-C and 1095-C reporting offers of coverage to its full-time employees (even if the ALE Member has fewer than 50 full-time employees of its own).

For more information on which employers are subject to the

Cut and paste the below link into your browser. Once inside the IRS forms page, click 1095-C and get to all final documents.

<https://www.irs.gov/forms-instructions-and-publications>

Final Non-ALE Instructions Confirm

Electronic Filing



If you are required to file 10 or more information returns during the year, you must file the forms electronically. The 10-or-more requirement applies in the aggregate to certain information returns that are original or corrected returns.

Cut and paste the below link into your browser. Once inside the IRS forms page, click 1095-B and get to all final documents.

<https://www.irs.gov/forms-instructions-and-publications>

2023

Instructions for Forms 1094-B and 1095-B



Department of the Treasury
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments relating to Forms 1094-B, Transmittal of Health Coverage Information Returns, and 1095-B, Health Coverage, and their instructions, such as legislation enacted after they were published, go to [IRS.gov/Form1094B](https://www.irs.gov/Form1094B) and [IRS.gov/Form1095B](https://www.irs.gov/Form1095B).

What's New

The electronic filing threshold for information returns required to be filed on or after January 1, 2024, has been decreased to 10 or more returns. See [Electronic Filing](#), later.

Additional Information

For information relating to the Affordable Care Act, visit [IRS.gov/ACA](https://www.irs.gov/ACA).

For the final regulations relating to Form 1095-B reporting, see T.D. 9660, 2014-13 I.R.B., at [IRS.gov/irb/2014-13_IRB/AR08.html](https://www.irs.gov/irb/2014-13_IRB/AR08.html) and T.D. 9970, 2023-02 I.R.B. 311, at [IRS.gov/irb/2023-02_IRB](https://www.irs.gov/irb/2023-02_IRB).

For additional guidance and proposed regulatory changes relating to Form 1095-B reporting, including the requirement to solicit the taxpayer identification number (TIN) of each covered individual for purposes of the reporting of health coverage information, see Proposed Regulations section 1.6055-1(h) and Regulations section 301.6724-1.

For additional information relating to reporting by providers of minimum essential coverage, go to [IRS.gov/Affordable-Care-Act/Employers/Information-Reporting-by-Providers-of-Minimum-Essential-Coverage](https://www.irs.gov/Affordable-Care-Act/Employers/Information-Reporting-by-Providers-of-Minimum-Essential-Coverage).

For information relating to filing Forms 1094-B and 1095-B electronically, visit [IRS.gov/For-Tax-Pros/Software-Developers/Information>Returns/Affordable-Care-Act-Information-Return-Air-Program](https://www.irs.gov/For-Tax-Pros/Software-Developers/Information>Returns/Affordable-Care-Act-Information-Return-Air-Program).

General Instructions for Forms 1094-B and 1095-B



Minimum essential coverage doesn't include coverage consisting solely of excepted benefits. Excepted benefits include vision and dental coverage not part of a comprehensive health insurance plan, workers' compensation coverage, and coverage limited to a specified disease or illness.

Who Must File

Every person that provides minimum essential coverage to an individual during a calendar year must file an information return reporting the coverage. Filers will use Form 1094-B (transmittal) to submit Forms 1095-B (returns).

Employers (including government employers) subject to the employer shared responsibility provisions sponsoring self-insured group health plans, including individual coverage health reimbursement arrangements (HRAs), will generally report information about the coverage in Part III of Form 1095-C instead of on Form 1095-B. However, employers that offer employer-sponsored self-insured health coverage to nonemployees who enroll in the coverage may use Form 1095-B, rather than Form 1095-C, Part III, to report coverage for those individuals and other family members. In general, employers with 50 or more full-time employees (including full-time equivalent employees) during the prior calendar year are subject to the employer shared responsibility provisions. See the Instructions for Forms 1094-C and 1095-C for more information about who must file Forms 1094-C and 1095-C and for more information about reporting coverage for nonemployees. Small employers that aren't subject to the employer shared responsibility provisions sponsoring self-insured group health plans will use Forms 1094-B and 1095-B to report information about covered individuals.

Insured coverage. Health insurance issuers and carriers must file Form 1095-B for most health insurance coverage, including individual market coverage and insured coverage sponsored by employers. However, health insurance issuers and carriers don't report coverage under the Children's Health Insurance Program (CHIP), Medicaid, Medicare (including Medicare Advantage), or the Basic Health Program provided through health insurance companies. These types of coverage are reported by the government sponsors of those programs.

In addition, health insurance issuers and carriers aren't

IRS Uses Form W-2 to Identify Non-Filer ALEs & Reporting Penalties Apply Per Form 1094/1095-C

Example: If an ALE failed to file 1 Form 1094-C and 100 Forms 1095-C with the IRS and distribute 100 Forms 1095-C to employees, the total penalty exposure is **\$62,000 if double jeopardy.**

So, you handed out the PDF forms, but sent paper to the IRS, **\$31,000 penalty.**

\$50 if corrected within 30 days

\$100 if corrected after 30 days but before Aug. 1

\$310 if no corrections are made *or if not filing on the correct medium.*

\$620 if acted with intentional disregard for distribution and filing.



Watch out for double penalties – they apply per form filed with the IRS and furnished to individuals.

Affordability & Safe Harbors

2024 = 8.39%

2023 = 9.12%

2022 = 9.61%

2021 = 9.83%

Safe Harbor is a technique that employers can use to prove affordability since ACA affordability rule is based on employee's *household income* – which employers don't have access to. There are **three methods to choose from**.

RATE OF PAY Method

Use current regular hourly rate of pay for **lowest paid** Full Time employee for least exposure to penalty risk.

This is the most commonly used method.

Max Monthly Charge =

Lowest FT Hourly Rate X 130 Hrs per Month* X ACA Affordability Rate

FORM W-2 Method

Use lowest paid Full Time Employee's wages as reported in Box 1 of Form W-2 for hourly and salaried employees.

Challenge: When utilizing this method from previous W-2, employer may not know if coverage was truly affordable until the end of the year in which the actual affordability rate would be calculated.

This method is not accepted for employees with tips or commissions only as their entire compensation.

Max Monthly Charge =

Annual W-2 of Lowest Paid FT Employee X ACA Affordability Rate) / 12 months

Federal Poverty Limit (FPL) Method

This is the most conservative method and in most cases an **employer will pay more** than the W-2 or Rate of Pay Methods.

- 2023 FPL = \$13,590
- 2022 FPL = \$12,880

Max Monthly Charge =

FPL Annual Rate X ACA Affordability Rate) / 12 months

Employer ACA Penalty Notices



Letter 226J	Sent to Applicable Large Employers (ALEs) identified as failing to comply with the ACA's Employer Responsibility Mandate. Triggered when one of the ALEs full time employees receives a premium tax credit.
Letter 5040J	Follow up to 226J if unanswered
Letter 5699	Notice of missing ACA reporting requirements or failing to file or furnish required reporting. IRS letter to confirm the status of their filing details when there is what they deem as a missing tax year filing provided <i>prior to penalty assessment</i> .
Letter 5698	IRS letter sent after employer has responded to Letter 5699 and requests more information or informs employer of their liability regarding the filing and furnishing of Forms 1094-C and 1095-C.
Letter 5005-A	Notice to employers that did not file ACA forms 1094-C and 1095-C with tax agency and/or failed to distribute the 1095-Cs to their employees
Notice 972CG	Proposed penalty notice issued to employers that filed late, filed incorrectly, missing information, or a combination of these failures.
CP215	Civil Penalty (CP) 215 is the demand of penalty payment after the IRS has reviewed the employer's response to an ACA penalty assessment.
CP504B	Civil Penalty 504B is a notice that the IRS is going to levy the employer's property in the amount the employer owes due to outstanding or non-payment of penalty.
Letter 1865C	Notice to employer that IRS is unable to process their ACA reporting forms 1094/5-C. Common reasons for this letter are due missing information, typo in company name or EIN.
Letter 3064C	Notice that the IRS has decided on a penalty assessment and that the employer may receive or request additional information.
Letter 194C	Response to employer's response to penalty notice 972CG informing the employer of their decision to either waive the penalty by accepting the employer's response or request additional information.

- **Note:** This is just a sample of common formal IRS Letters regarding ACA Laws and ESRP. This is not an all-inclusive listing of the ACA related letters that employers can receive.



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