

## GROUP HEALTH PLAN PENALTY REFERENCE SUMMARY

Note: This reference document was last updated September 2024.

Penalties and enforcement information are subject to change.

The following information is not intended to be exhaustive but is meant to highlight the possible consequences of noncompliance with certain employer-sponsored group health plan obligations. Governing Agencies reserve the right to assess penalties for multiple violations and may determine penalties based on severity of the violations, plan member impact, and willful negligence. Note that in certain situations persons or agencies can make use of the legal system and file lawsuits. This topic is beyond the scope of this memo.

### ACA PENALTIES OVERVIEW

**EMPLOYER SHARED RESPONSIBILITY PAYMENT (ESRP) –** Two parts. Applicable Large Employers Offer MEC and meet Affordable/Minimum Value requirements or face exposure to an ESRP under Section 4980H. The IRS treats the ESRP amount as an excise tax.

ESRP	2023	2024	2025
<b>4980H(a) ESRP</b> <i>(aka “sledgehammer”)</i>  <b>Failure to Offer MEC to 95% of Full-Time Employees and dependents, and at least 1 Full-Time employee obtains Premium Tax Credit on Exchange</b>  <i>*Calculation is monthly excise tax multiplied by all Full-Time employees MINUS the first 30 for free</i>	<b>MONTHLY</b> <b>\$240.00</b> per month for all ACA full-time employees  <b>ANNUALIZED</b> <b>\$2,880*</b>	<b>MONTHLY</b> <b>\$247.50</b> per month for all ACA full-time employees  <b>ANNUALIZED</b> <b>\$2,970*</b>	<b>MONTHLY</b> <b>\$241.66</b> per month for all ACA full-time employees  <b>ANNUALIZED</b> <b>\$2,900*</b>
<b>4980H(b) ESRP</b> <i>(aka “tack hammer”)</i>  <b>Failure to Offer Minimum Value or ACA Affordable Coverage and at least 1 Full-Time employee obtains Premium Tax Credit on Exchange</b>  <i>*Calculation is monthly excise tax multiplied by months a full-time employee received subsidized Exchange coverage.</i>	<b>MONTHLY</b> <b>\$360.00</b> per month for each ACA full-time employee with Premium Tax Credit  <b>ANNUALIZED</b> <b>\$4,320*</b>	<b>MONTHLY</b> <b>\$371.66</b> per month for each ACA full-time employee with Premium Tax Credit  <b>ANNUALIZED</b> <b>\$4,460*</b>	<b>MONTHLY</b> <b>\$362.50</b> per month for each ACA full-time employee with Premium Tax Credit  <b>ANNUALIZED</b> <b>\$4,350*</b>

**INFORMATION RETURN PENALTIES FOR 1094 and 1095 FORMS –** Applicable Large Employers and employers with self-insured coverage annually report health coverage information using Forms 1094 and 1095 or face exposure to civil penalties under Section 6721 and 6722. These penalties also apply to employers who fail to file electronically as required.

**\*Note: failure to file and furnish can result in double penalties!!**

APPLICABLE YEAR	Corrected <i>within 30 days</i> after due date	Corrected prior to August 1	Corrected <i>after August 1</i>	Intentional neglect
Tax Year 2024 – Filed in 2025	\$60 per return	\$120 per return	\$310 per return or unfurnished 1095 statement \$3,783,000 Max	\$630 per return or unfurnished 1095 statement -No Max or Limit

Tax Year 2023 – Filed in 2024	\$50 per return	\$110 per return	\$290 per return or 1095 unfurnished statement \$3,532,500 Max	\$580 per return or unfurnished 1095 statement -No Max or Limit
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[Information return penalties](#) | [Internal Revenue Service \(irs.gov\)](#)

## CAFETERIA PLAN/IRC SECTION 125 PENALTIES

### POSSIBLE VIOLATIONS:

- Qualification Mistake
  - No formal plan documents adopted
- Operational failure
  - Not following plan terms
  - Administrative errors & Fiduciary failures
- Failing non-discrimination compliance rules
- Failure to respond to plan document requests

Consequences that flow from **violating** the Code could include the following:

- disqualification of the program;
- **imposition on the employer of employment tax withholding liability and penalties** with regard to all reimbursements paid under the program;
- imposition on the **employee** of employment and **income tax liability and penalties** with regard to all reimbursements received under the program; and
- reversal of the transactions that triggered noncompliance.

While the IRS may have the power to impose the maximum **penalties** for an infraction, what it might actually do depends on the facts and circumstances. In less egregious cases, the IRS might only impose a percentage of the total income and employment tax liability.

## COBRA VIOLATION PENALTIES

PENALTY TYPE	AMOUNT
<b>IRS Excise Tax Penalty</b>	<b>\$100 per day</b> for each qualified beneficiary (\$200 if more than one family member is affected)
<b>DOL ERISA Penalties</b>	<b>\$110 per day</b>
<b>Court-awarded damages, attorneys fees and interest in suits to recover COBRA coverage</b>	<b>\$\$\$ Undefined &amp; Unlimited</b> Legal and settlement costs from plan participant and beneficiary lawsuits attempting to recover statutory penalties and COBRA coverage (discretionary amounts awarded by courts per case)

## ERISA PENALTIES

**Note ERISA has been around since 1974 and there is a lot of litigation surrounding this body of law as well. We have only highlighted a very few potential areas of risk and only some penalties assessable by EBSA (DOL).**

Various penalties can be assessed and applied by the DOL.

- Failure to File Form 5500
- Failure to respond to requests for information
- Prohibited transactions and other breaches of fiduciary duties

DOL PENALTIES*		
VIOLATION	01/15/23 – 08/07/24	Effective 08/08/24
Failure to file Form 5500 <sup>(1)</sup>	\$2,586 per day	
MEWA failure to file (M-1)	\$1,881 per day	
Willful failure to furnish Medical SBC	\$1,362 per failure	\$1,406 per failure
Failure to furnish information requested by DOL	\$184 per day Capped at \$1,846 (per request)	
Violation of Medicare Secondary Payer (MSP) Rules		
a) Incentivizing Employees to enroll in Medicare versus Group Health	\$11,162 per violation	\$11,524 per violation
b) Failure to report where group health plan is or was primary	\$1,428 per violation	\$1,474 per violation
Fiduciary Breach	20% of “applicable recovery amount” in addition to settlement agreement costs	

\*subject to annual adjustments typically made by January 15<sup>th</sup> of each year.

(1) Delinquent 5500 Filers Program Option: \$10 per day it is late (from due date to being filed), not to exceed \$2000 per plan. If submissions are related to more than one delinquent filing, maximum penalty is \$2000 per plan, not to exceed \$4000.

HIPAA VIOLATIONS (effective August 8, 2024)				
	JUDGEMENT	MINIMUM PER VIOLATION	MAXIMUM PER VIOLATION	ANNUAL PENALTY CAP
Tier 1	Lack of Knowledge	\$141	\$71,162	\$2,134,831
Tier 2	Reasonable Cause	\$1,424	\$71,162	\$2,134,831
Tier 3	Willful Neglect (corrected)	\$14,232	\$71,162	\$2,134,831
Tier 4	Willful Neglect ( <i>not corrected within 30 days</i> )	\$71,162	\$71,162	\$2,134,831

\*\*State Attorney Generals can issue additional fines for HIPAA violations up to a maximum of \$25,000 per violation per category, per year.

[2024 Penalties for HIPAA Violations - The HIPAA Guide](#)

## PCORI PENALTIES

Applicable to self or level funded plans (to include HRAs) only.

### **FAILURE TO FILE & PAY:**

Any discovery of missed or overlooked reporting of or payment of PCORI fees by the due date of July 31<sup>st</sup> annually should be immediately corrected by filing the IRS Excise Tax Form 720 and paying the fee due for the appropriate tax year. *If an IRS PCORI penalty letters is received* by the IRS after you file the late return, be sure to reply and respond within the appropriate timeframe with an explanation and determine if you might meet reasonable-cause criteria.

**The penalty for failure to file is assessed at 5% of the amount due per month (with a cap of 25% of the total amount due).**

**Legal Disclaimer:** *The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. While these resources are provided in consultation with federal and state statutes, please be aware that additional applicable regulations, laws, and legal considerations may exist. Therefore, if you have specific questions or concerns, please consult legal counsel. Please also be aware that the information provided is current as of this date and the information contained herein is subject to change.*