



Published: October 31, 2023

Final 2023 ACA Reporting Instructions and Forms Issued

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The IRS released final instructions and forms for calendar year 2023 ACA reporting, including Forms 1094-C, 1095-C, 1094-B, and 1095-B. As a reminder, it is important to ensure the forms are filed accurately and timely with both the IRS and as distributed to employees, as good faith relief from penalties is no longer available.

Forms 1094-C/1095-C

Applicable large employers (“ALEs”) must furnish Form 1095-C to full-time employees and file Form 1094-C and all 1095-Cs with the IRS. ALEs offering a self-insured group health plan must also furnish Forms 1095-C to covered employees or other primary insured individuals in the self-funded health plan (e.g., covered part-time employees, COBRA qualified beneficiaries).

The calendar year 2023 Form 1095-C must be furnished to full-time employees and other individuals by **Friday, March 1, 2024**. This deadline usually falls on March 2, except in a leap year when the date is March 1. The Form 1094-C and all Forms 1095-C must be filed with the IRS electronically by **Monday, April 1, 2024**.

ALEs, in coordination with their payroll or other reporting vendors, should have records to determine each employee’s status as an ACA FTE or not an ACA FTE for each month during 2023 in preparation to complete, furnish and file these forms for 2023.

Forms 1094-B/1095-B

Employers that are not ALEs and offer self-funded group health plan coverage (including level-funded plans) must furnish and file forms regarding minimum essential coverage. Specifically, as the provider of the self-funded plan, the employer

reports to the IRS and all covered individuals (e.g., employees, COBRA qualified beneficiaries, spouses, dependents) the coverage they had during the calendar year. To meet this requirement, employers use Forms 1094-B and 1095-B.

The calendar year 2023 Form 1095-B must be furnished to covered individuals by **Friday, March 1, 2024**. The Form 1094-B and all Forms 1095-B must be filed with the IRS electronically by **Monday, April 1, 2024**. Very few employers will be able to file by paper with the IRS, as set forth below. If eligible, paper filing is due by February 28, 2024.

Employers should coordinate with payroll or other reporting vendors to assist in this process.

What's New

While there are no significant changes to the 2023 forms, most employers will be required to file the forms electronically with the IRS. In addition, the penalties for failures have increased.

Electronic Filing Required (10+ Forms)

Employers required to file 10 or more information returns (e.g., Forms W-2, 1094-C, 1095-C, 1094-B, 1095-B) during the year must file these forms electronically on or after January 1, 2024. Previously, the IRS allowed employers filing fewer than 250 returns to file hard-copy (paper) forms.

The IRS also encourages employers filing fewer than 10 returns to consider electronic filing.

2023 Penalties

The instructions reiterate that all ALEs and other employers that sponsor self-funded group health plans that fail to comply with the information reporting requirements may be subject to the general reporting penalty provisions for failure to file correct information returns and failure to furnish correct payee statements. Good faith relief is no longer available. However, penalties may be waived if the failure is due to reasonable cause and not willful neglect.

For 2023, the following penalties may apply:

- Failure to file a correct return is \$310/statement (total calendar year penalty not to exceed \$3,783,000).
- Failure to furnish a correct statement is \$310/statement (total calendar year penalty not to exceed \$3,783,000).

It should be noted that an employer that fails to both file and furnish a correct statement is subject to a combined penalty of \$620/statement with a maximum penalty of \$7,566,000.

Employer Action

It is important to identify vendors, like payroll or other reporting administrators, to assist in this process especially as most employers will be required to file forms electronically with the IRS. A health plan carrier typically does not prepare this reporting. ALEs should begin preparing and ensure that Form 1095-C is furnished to full-time employees and other individuals by **March 1, 2024**. Form 1094-C and all Forms 1095-C should be electronically filed with the IRS by **April 1, 2024**.

Employers that are not ALEs but offer self-funded group health plan coverage should ensure a process is in place for furnishing and filings Forms 1094-B and 1095-B. Form 1095-B must be furnished to covered individuals by **March 1, 2024**, and all forms 1095-B along with Form 1094-B must be electronically filed with the IRS by **April 1, 2024**.

Employers should be certain the statements are complete and accurate since good faith relief is no longer available.

Employers may have additional reporting obligations for employees residing in states with an individual mandate (California, Massachusetts, New Jersey, Rhode Island, Vermont, Washington D.C.). Ensure vendors will assist with state reporting obligations.