



EMPLOYER NEWSLETTER

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REMINDER: FORM W-2 REPORTING OF EMPLOYER-SPONSORED HEALTH COVERAGE

Employers that file at least 250 Forms W-2 for the preceding calendar year are required to include the total cost of employer-sponsored health benefits in Box 12 of the Forms W-2.

The cost of benefits will not be included as taxable income.

Both the employee and employer contributions must be reported.

If the employee receives health insurance coverage under multiple plans, the employer must disclose the aggregate value of all coverage, but excludes contributions to HSAs, Archer MSAs, salary reduction contributions to FSAs (employee funds), and standalone dental and vision.

Reporting applies to fully-insured and self-insured employer plans including union plans (except it does not apply to multi-employer plans), state and federal government employers of active at work employees only (not retirees).

Visit the IRS website for a chart of what must be reported:

[irs.gov/uac/Form-W-2-Reporting-of-Employer-Sponsored-Health-Coverage](https://www.irs.gov/uac/Form-W-2-Reporting-of-Employer-Sponsored-Health-Coverage)

HEALTH INSURANCE TAX (HIT) RETURNS IN 2018

The Patient Protection and Affordable Care Act (PPACA) requires entities that provide health insurance to pay an annual non-deductible fee to the IRS according to market share based on premiums written. This tax is intended to recapture some of the benefits that insurers receive as more Americans purchase health insurance. The fee only applies to fully-insured plans.

This is an annual tax due in September of each year and increases annually based on the health insurer's percentage of premium growth. Health insurers' contributions will be set so that the fund will accumulate \$58.8 billion over a five-year period starting with \$8 billion in 2014. The tax will be based on the insurer's share of the total of the net written premiums of all covered entities.

The President signed legislation on December 18, 2015 for a one-year suspension (which impacts 2017 premium) of the Health Insurance Tax (HIT). The tax returns in 2018.

This tax is projected to add an additional cost of 2-2.5%.

INFORMATION REPORTING FOR EARLY 2018 FILING: FORMS 1094 AND 1095 AND DEADLINE EXTENSIONS

Who is Required to Report?

Forms 1094-B and 1095-B are used by insurers, self-insuring employers, and other parties that provide minimum essential health coverage¹ regardless of size to report information on this coverage to the IRS and to covered individuals. Applicable large employers² [generally those with 50 or more full-time employees, including full-time equivalents (FTEs)] will use Forms 1094-C and 1095-C to report information to the IRS and to their full-time employees about their compliance with the Employer Shared Responsibility provisions ("Play or Pay") and the health care coverage they have offered. Employers subject to both reporting provisions (generally self-insured employers with 50 or more full-time employees, including FTEs) will satisfy their reporting obligations using Forms 1094-C and 1095-C.

The IRS has released the final forms and instructions for 1094-B, 1095-B, 1094-C, and 1095-C for calendar year 2017 reporting. Employers are required to report in early 2018 for calendar year 2017.

2017 Forms:

- Form 1094-B (transmittal): [irs.gov/pub/irs-pdf/f1094b.pdf](https://www.irs.gov/pub/irs-pdf/f1094b.pdf)
- Form 1095-B: [irs.gov/pub/irs-pdf/f1095b.pdf](https://www.irs.gov/pub/irs-pdf/f1095b.pdf)
- Form 1094-C (transmittal): [irs.gov/pub/irs-pdf/f1094c.pdf](https://www.irs.gov/pub/irs-pdf/f1094c.pdf)
- Form 1095-C: [irs.gov/pub/irs-pdf/f1095c.pdf](https://www.irs.gov/pub/irs-pdf/f1095c.pdf)

¹ [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)

² [irs.gov/affordable-care-act/employers/information-reporting-by-applicable-large-employers](https://www.irs.gov/affordable-care-act/employers/information-reporting-by-applicable-large-employers)



When are the forms due?

Information Reporting Deadlines Extended on December 22, 2017

The IRS released notice [2018-06³](#), which extends the due date for certain entities to provide 2017 health coverage information forms to individuals. Insurers, self-insuring employers, other coverage providers, and applicable large employers now have until March 2, 2018, to provide Forms 1095-B or 1095-C to individuals, which is a 30-day extension from the original due date of January 31st.

FORM	FURNISHED TO THE EMPLOYEE	FILED WITH THE IRS (PAPER)	FILED WITH THE IRS (ELECTRONICALLY)
1094-B	N/A	2/28/2018	4/2/2018
1095-B	3/2/2018	2/28/2018	4/2/2018
1094-C	N/A	2/28/2018	4/2/2018
1095-C	3/2/2018	2/28/2018	4/2/2018

For more information regarding information reporting by employers on Form 1094-C and Form 1095-C, visit the IRS FAQs: [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)

Please note that the 2017 Tax Act signed by President Trump on December 22, 2017 does not eliminate the employer shared responsibility mandate, or the associated 1094 and 1095 information reporting requirements.

³[irs.gov/pub/irs-drop/n-18-06.pdf](https://www.irs.gov/pub/irs-drop/n-18-06.pdf)

IRS ANNOUNCES PROCEDURES FOR THE ASSESSMENT AND PAYMENT OF EXCISE TAXES UNDER THE EMPLOYER SHARED RESPONSIBILITY MANDATE

Basics of the Employer Shared Responsibility / Play or Pay Mandate

Starting in 2015, employers with at least 50 full-time including equivalent employees, on average, in the preceding calendar year, are subject to this ACA provision. All union, part-time, variable hour and seasonal employees are counted to determine the 50 threshold as well as any affiliated companies as determined by IRC 414 (b), (c), (m), or (o). Such an employer is known as an Applicable Large Employer (ALE).

There are two possible penalties that apply. In 2015, the ALE was required to offer at least minimum essential coverage (MEC) to 70% of full-time employees, which is the larger of the two penalties (note, the percentage of full-time employees was changed for 2016 and beyond). If the employer did not offer affordable minimum value coverage to their full-time employees and their dependents to age 26, the employer may be subject to the lesser of the two penalties. The penalty or tax assessment applies if at least one full-time employee applies for and accepts a premium tax credit (subsidy) from an exchange marketplace. Individuals are eligible for a subsidy if their household income is up to 400% of the Federal Poverty Level, they are not eligible for Medicare or Medicaid, and they are not enrolled in the employer's health plan.

Visit the following link to reference the IRS FAQ regarding this provision:

[irs.gov/affordable-care-act/employers/employer-shared-responsibility-provisions](https://www.irs.gov/affordable-care-act/employers/employer-shared-responsibility-provisions)

In November 2017, the IRS announced procedures for the penalty assessment. This first wave of penalty notices is for not offering minimum essential coverage in 2015. The next waves will include notices for not offering affordable minimum value coverage in 2015. The IRS will thereafter send notices for 2016 and beyond.

Steps to take if you receive IRS Letter 226J:

- Review for accuracy. It is quite likely an assessment is being levied as the 1095 reporting was done using incorrect coding, especially when the employer was subject to transitional relief
- Act quickly
- Access your information and documentation of what you filed and why

For a copy of Letter 226J, visit: [irs.gov/pub/notices/ltr226j.pdf](https://www.irs.gov/pub/notices/ltr226j.pdf)

Employers who have been counting on the IRS not to enforce the employer shared responsibility payments must be aware that the IRS issued new FAQs outlining upcoming issuance of penalty demand letters in QA 55-58.

The IRS FAQs can be found here: [irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act#Making](https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act#Making)

QA 55 - How does an employer know that it owes an employer shared responsibility payment?

According to QA 55, the IRS plans to issue Letter 226J to affected ALEs. The letter will include:

- A summary table itemizing each month an employer may be liable for a payment
- A response form, Form 14764, "ESRP Response"
- Form 14765, which will list by month an ALE's assessable full-time employees
- A description of actions the ALE employer should take to dispute the letter's findings



Letter 226J will include a due date for the employer's response. It will generally be 30 days from the date of the letter. If an employer does not respond or does not respond timely, the IRS will issue a notice and demand for payment, Notice CP 220J.

The IRS states that Letter 226J for calendar year 2015 will be issued in late 2017.

For further details on understanding Letter 226J, visit: [irs.gov/individuals/understanding-your-letter-226-j](https://www.irs.gov/individuals/understanding-your-letter-226-j)

QA 56 - Does an employer who receives a Letter 226J proposing an employer shared responsibility payment have an opportunity to respond to the IRS about the proposed payment, including requesting a pre-assessment conference with the IRS Office of Appeals?

Yes. ALEs will have an opportunity to respond to Letter 226J before any employer shared responsibility liability is assessed and notice and demand for payment is made. Letter 226J will provide instructions for how the ALE should respond in writing, either agreeing with the proposed employer shared responsibility payment or disagreeing with part or all of the proposed amount.

If the ALE responds to Letter 226J, the IRS will acknowledge the ALE's response to Letter 226J with an appropriate version of Letter 227 (a series of five different letters that, in general, acknowledge the ALE's response to Letter 226J and describe further actions the ALE may need to take).

If the ALE does not respond to either Letter 226J or Letter 227, the IRS will assess the amount of the proposed employer shared responsibility payment and issue a notice and demand for payment, Notice CP 220J. The IRS allows a 30-day period to respond.



QA 57 - How does an employer make an employer shared responsibility payment?

If, after correspondence with the IRS or a conference with the IRS Office of Appeals, it is determined that an ALE is liable for an employer shared responsibility payment, they will issue a notice and demand for payment, Notice CP 220J. Notice CP 220J will include a summary of the payment. For payment options, such as entering into an installment agreement, refer to **Publication 594**⁴, The IRS Collection Process.

The general steps from billing to collection, as outlined in IRS Publication 594, are:

1. If you owe taxes, we will send you a bill. This is your first bill for tax due. Based on your return, we will calculate how much tax you owe, plus any interest and penalties.
2. If you don't pay your first bill, we will send you at least one more bill. Remember, interest and penalties continue to accrue until you've paid your full amount due.
3. If you still don't pay after you receive your final bill, we will begin collection actions. Collection actions can range from applying your subsequent tax year refunds to tax due (until paid in full) to seizing your property and assets.

QA 58 - When does the IRS plan to begin notifying employers of potential employer shared responsibility payments?

For the 2015 calendar year, the IRS plans to issue Letter 226J informing ALEs of their potential liability in late 2017.

Additionally, the IRS has released Form 14764, and Form 14765 which will accompany the Employer Shared Responsibility Penalty Letter 226J. These forms can be accessed, via the links below:

- **Form 14764**⁵ - ESRP Response (Employer Shared Responsibility Response)
- **Form 14765**⁶ - Employee Premium Tax Credit (PTC) Listing (Employee PTC Listing)

Please note that the 2017 Tax Act signed by President Trump on December 22, 2017 does not eliminate the employer shared responsibility mandate, or the associated 1094 and 1095 information reporting requirements.

⁴irs.gov/pub/irs-pdf/p594.pdf

⁵irs.gov/pub/irs-pdf/f14764.pdf

⁶irs.gov/pub/irs-pdf/f14765.pdf



FEDERAL AGENCIES EXPAND CONTRACEPTIVE COVERAGE EXEMPTIONS BASED ON RELIGIOUS AND MORAL OBJECTIONS

The ACA requires that non-grandfathered group health plans provide coverage without cost-sharing for preventive care, which includes contraceptive services. Previously, the contraceptive coverage was subject to exemptions for religious employers and accommodations for certain other non-profit religious organizations and closely held for-profit entities with sincerely held religious beliefs against certain contraceptives.

Effective as of October 6, 2017, interim final rules issued by the U.S. Departments of Health and Human Services (HHS), Treasury, and Labor expand the exemptions.

Expanded Exemptions

The new rules exempt entities that object to establishing, maintaining, providing, offering, or arranging (as applicable) coverage, payments, or a plan that provides coverage or payments for some or all contraceptive services based on their sincerely held religious beliefs or moral convictions. For this purpose, the term “contraceptive services” includes contraceptive or sterilization items, procedures, or services, or related patient education or counseling.

- **Religious Exemption** - This exemption applies to non-governmental plan sponsors—including non-profit organizations and for-profit entities (whether or not they are closely held or publicly traded)—that object based on sincerely held religious beliefs.
- **Moral Exemption** - This exemption includes the plans of plan sponsors that are non-profit entities, as well as for-profit entities that have no publicly traded ownership interests (as defined under the law).



Disclosure Requirements

When all or a subset of contraceptive services are omitted from a plan's coverage, otherwise applicable ERISA disclosures must reflect the omission of coverage in ERISA plans.

For more information on the interim final rules, visit: hhs.gov/about/news/2017/10/06/trump-administration-issues-rules-protecting-the-conscience-rights-of-all-americans.html

Please keep in mind that many states require such coverage. This Federal expansion of exemption does not change state mandate of coverage.

Source: HR 360

INDIVIDUAL RESPONSIBILITY COVERAGE MANDATE PENALTY TO BE REPEALED AS OF JANUARY 1, 2019: POSSIBLE IMPLICATIONS FOR EMPLOYERS

Background information:

The ACA includes the individual responsibility provision, which requires all American citizens and legal residents to have qualifying health care coverage for at least nine (9) months of the year, qualify for a coverage exemption, or make a shared responsibility payment when filing their federal income tax returns. This provision is effective since January 1, 2014.

For purposes of the ACA, qualifying health care coverage is also called minimum essential coverage (MEC).

Minimum essential coverage (MEC) includes at a minimum any of the following:

- Employer-sponsored coverage (including COBRA coverage and retiree coverage)
- Coverage purchased in the individual market
- Medicare coverage (including Medicare Advantage)
- Medicaid coverage
- Children's Health Insurance Program (CHIP) coverage
- Certain types of Veterans health coverage
- TRICARE

Effective January 1, 2019, the Individual Responsibility Coverage Mandate Penalty will be repealed.

The implication for employer-sponsored plans may be that employees, especially those who are not in need of medical services, will decline coverage causing premiums to rise should only the unhealthy enroll. The domino effect of this may be that employers will experience difficulty in meeting the participation requirements of the carriers and/or will be charged excess premium in the large group market to cover those who wish to enroll.

NEW EMPLOYER TAX CREDIT FOR PAID FAMILY AND MEDICAL LEAVE

For tax years 2018 and 2019, employers subject to the federal Family and Medical Leave Act (FMLA) and that have a paid family and medical leave in place may qualify for a newly established tax credit of up to 25% of the annual wages paid to those employees.

To receive the credit, employers will have to provide at least two weeks of leave and compensate their workers at a minimum of 50 percent of their regular earnings. The tax credit will range from 12.5 percent to 25 percent of the cost of each hour of paid leave, depending on how much of a worker's regular earnings the benefit replaces.

Employers will only be able to apply the credit toward workers who earn below \$72,000 per year.

Both full-time and part-time workers, if employed at the organization for at least a year, must be offered paid leave for an employer to be able to claim the tax credit. Employers must allow part-time employees paid leave on a pro-rata basis.

For further details on the Tax Cuts and Jobs Act, visit: congress.gov/bill/115th-congress/house-bill/1/text

THE KAISER FAMILY FOUNDATION AND HEALTH RESEARCH AND EDUCATION TRUST: 2017 EMPLOYER HEALTH BENEFITS SURVEY

The Kaiser Family Foundation and Health Research and Educational Trust have released the 2017 Employer Health Benefits Survey, which provides a detailed look at trends in employer-sponsored health coverage including premiums, employee contributions, cost-sharing provisions, and employer practices.

The 2017 survey included more than 2,100 interviews with non-federal public and private firms.

The full report and additional resources can be accessed via the links below.

- 2017 Employer Health Benefits Survey: files.kff.org/attachment/Report-Employer-Health-Benefits-Annual-Survey-2017
- 2017 Employer Health Benefits Survey – Summary of Findings: files.kff.org/attachment/Summary-of-Findings-Employer-Health-Benefits-2017
- Kaiser Family Foundation Website: kff.org/health-costs/report/2017-employer-health-benefits-survey/