



A HUB International Webinar

2020 ACA Reporting

Big changes ahead. Are you prepared?



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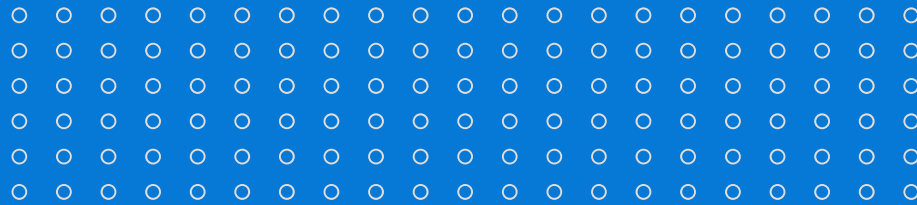
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Agenda

1. ACA Foundational Concepts and Reminders
2. ALE Requirements
3. COVID-19 and the ACA



1



ACA Foundational Concepts & Reminders

The Employer Mandate



What is an Applicable Large Employer?

An **Applicable Large Employer (ALE)** is one who **employs 50+ full-time employees, including full-time equivalent employees (FTEs)**

$$\text{FTEs} = \frac{\text{monthly hours of all part-time EEs}}{120}$$

- OK to exclude truly “seasonal” as defined by ACA (*be careful here!*)

Full-time EE = 120 hours per month

- **Measured each calendar year**, for applicability

Employers under common ownership or common control are **aggregated**

IRS ALE Calculator

<https://www.irs.gov/affordable-care-act/employers/determining-if-an-employer-is-an-applicable-large-employer>

Control Group

IRS Code Section 414

Parent – Subsidiary

When **one or more businesses** are connected through **specific percentage of stock ownership** with a **common parent corporation**

Sibling *(Brother / Sister)*

A group of **two or more corporations**, where **five or fewer common owners** own directly or indirectly a **"controlling interest"** of each group and have **"effective control"** based on **specific stock / ownership interest**

Combination

A group consisting of **three or more organizations** that are **organized in a specific manner set forth in the regulation**

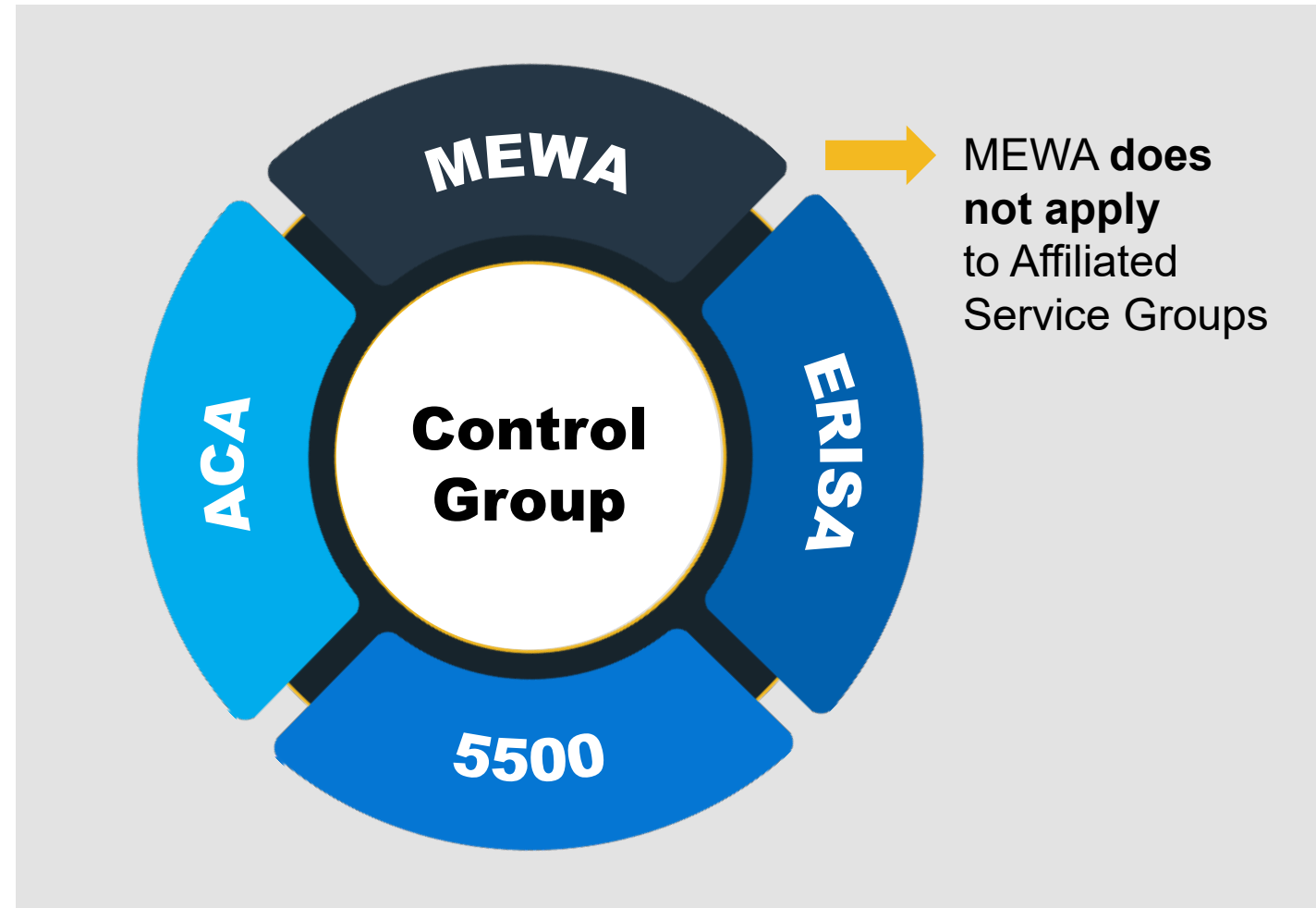
Control Groups and Related Issues

Determinations must be made by outside counsel or tax advisor

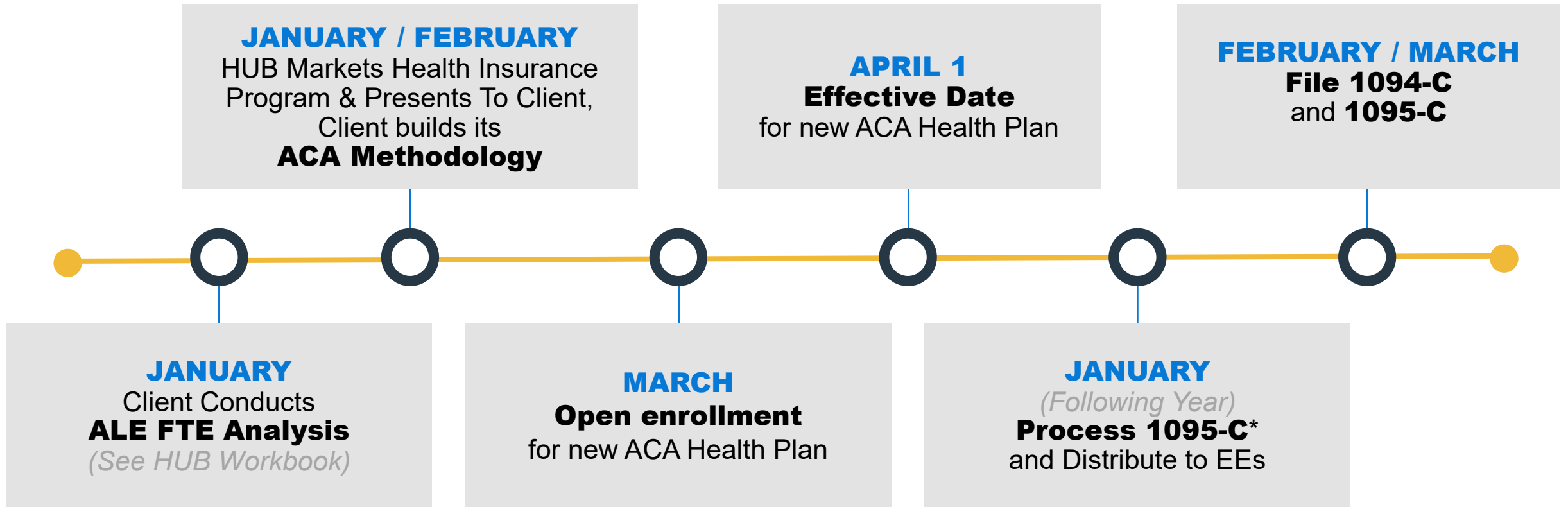
Controlled Group Rules –

Foundation for identifying whether two or more employers need to be either:

- Grouped together and treated as one employer for plan / ACA, OR
- If one plan and unrelated employees, you may have a MEWA, OR
- Separate plans by entity where control group status does not exist



Year-End and New ALEs *Likely Timeline*



➔ **New ALEs have through April 1 to implement a compliant ACA program**

Employer Mandate

“A” Penalty

Offer a health plan with **Minimum Essential Coverage**

To **at least 95%** of full-time employees



2020: \$2,570 x total number of full-time employees *(less 30)*

“B” Penalty

The plan must meet Minimum Value

(the plan's share of the total allowed cost of benefits provided to an employee (the minimum value percentage) is at least 60%)

The employee-only cost of that plan must be Affordable

(for 2020 9.78% of the employee's household income)



2020: \$3,860 x number of employees that **receive a credit**

Penalties Through the Years

		2015	2016	2017	2018	2019	2020
4980H(a) Penalty	Annual Amount	\$2,080.00	\$2,160.00	\$2,260.00	\$2,320.00	\$2,500.00	\$2,570.00
	Monthly Amount	\$173.33	\$180.00	\$188.33	\$193.33	\$208.33	\$214.17
	MEC Offer % of FT	70%	95%	95%	95%	95%	95%
	FT Headcount Reduction	*80	30	30	30	30	30
4980H(b) Penalty	Annual Amount	\$3,120.00	\$3,240.00	\$3,390.00	\$3,480.00	\$3,750.00	\$3,860.00
	Monthly Amount	\$260.00	\$270.00	\$ 282.50	\$290.00	\$312.50	\$321.67
	Affordability Safe Harbor %	9.56%	9.66%	9.69%	9.56%	9.86%	9.78%
	FPL Annual Amount <i>(individual)</i>	\$11,670.00	\$11,770.00	\$11,880.00	\$12,060.00	\$12,140.00	\$12,490.00

*80 FT exemption for 2015 only applied if 2015 ALE "size" was 100 or more

ACA Definitions – Employees

Full Time Employee – Reasonably expected to work on average at least 30 hours per week, or 130 hours per month

Hours of service include all PAID hours, including vacation, paid leave, sick leave, etc.

Hours served for all federal leaves including FMLA, USERRA and jury duty **must be counted toward hours worked**

Variable Hour, Part Time, or Seasonal Employee – Upon hire, if employer is unable to determine if an employee is reasonably expected to work an average of 30 hours per week

- **Two options regarding non-FT employees:**
 - Concede the **employee will work average of 30 hours** per week and make the employee eligible for medical plan
 - Make series of determinations to **determine if the employee qualifies for eligibility for medical plan using a “look-back”** measurement period
-

Other Categories

Seasonal Employees – Treated as other variable employees; work is seasonal if it can only be performed during certain times of year

Hired around the same time each year, and

Customarily working for **less than 6 months**

Ski Instructors, etc.

Resort employees / some interns

Temporary / Staffing Agency Employees – YOUR employees if YOU control them

Can delegate obligation to PEO or staffing company

Must meet certain requirements

Interns – Treated like all other FT employees – unless seasonal exception applies

Overview of Measurement Periods

ACA Measurement Periods

Full Time

- ✓ **Waiting Period**
- ✓ **Enroll**
- ✓ **Measure / Downshift**



Variable Hour, Part Time, or Seasonal Employee

- ✓ **Look-back**
- ✓ **Measurement**
- ✓ **Stability**



Basic Principles – Measurement Periods

Full Time

- Benefits effective **after waiting period**
(not more than 90 days)
- Can be measured under the look-back but **benefits commence after 90 days**

Variable Hour, Part Time, or Seasonal Employee

- Measured **over time**
(no less than 3 months and not greater than 12 months)
- Benefits eligibility **based on results of measurement**
- If benefits eligible - guaranteed coverage during Stability Period **so long as EE pays his / her portion**
(special considerations for protected leaves – FMLA / WC / ADA)

Monthly Measurement Periods

Default method of measuring employees if employees are not measured under the look-back measurement period.

Coverage is offered for every month the employee works 130 hours

Measuring – New Hires

“Initial” measurement period used to measure Part Time / Seasonal / Variable Hour new hires

Employer must establish “Initial Measurement Period” for newly hired employees

Must be **between 3 and 12 months**

If the new employee is **determined to be benefits eligible** (*average 130 hours each month / 30 hours each week*) **during the initial measurement period**, must be offered coverage during stability period

Stability period must be the same as initial measurement period, but **no less than 6 months**

Measuring – Ongoing Employees

Ongoing = Employee who has been employed by more than 12 months

“Standard” measurement period – Measurement period that **calculates average hours worked for non-FT employees** on an ongoing basis. Employees in employment for longer than 12 months

Must designate a “Standard Measurement Period” as look-back period

- Must be between 3 and 12 consecutive months
- If employee averages more than 30 hours per week, employee qualifies for medical coverage during subsequent “Stability Period”

“Administrative Period” of up to 90 days between standard measurement period and stability period to determine eligibility and provide opportunity to enroll

“Stability Period” must be:

- the greater of 6 consecutive months OR
 - the same number of consecutive months as the standard measurement period
-

Summary – Lookback Measurement Period

Initial Periods

(new employees)

- **Measurement:** between 3 → 12 months
- **Administrative:** maximum 90 days
 - the combination of the Initial Measurement and the Administrative Periods cannot exceed a total of 13 months and a fraction of a month – consider a “Split Administrative Period”
- **Stability:** At least 6 months but not shorter than the Initial Measurement Period

Ongoing / Standard Periods

(employees in service for over 12 months)

- **Measurement:** between 3 → 12 months
- **Administrative:** maximum 90 days
- **Stability:** At least 6 months but not shorter than the Standard Measurement Period

Measurement – ACA Hours to Include

ACA and Measurement Periods: What hours count as hours of service?

Provision	Counts as an ACA hour of service	Counts towards completing measurement period
Paid leave (<i>including jury duty and time taken under EPSL / EFMLA</i>)	Yes	Yes
Vacation, PTO and Sick time	Yes	Yes
FMLA (<i>including unpaid leave</i>)	Yes	Yes
State disability plan or state Paid Family Leave	No	No
Unpaid personal leaves of absence	No	No
Unemployment Insurance	No	No
Employer paid or employee pre-tax STD / LTD plan	Yes	Yes
Leave under USERRA	Yes	Yes

Breaks in Service and Measurement Periods

Break in service *less than 13 weeks*

→ Treated as a rehire under ACA

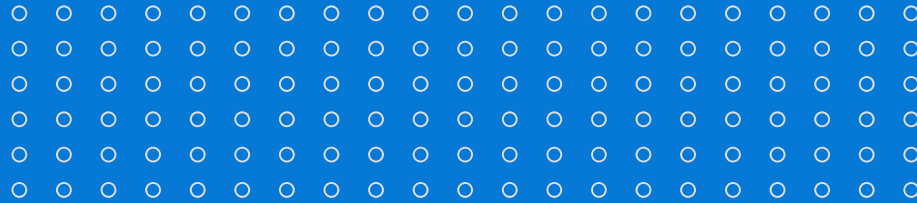
- **Benefits eligibility** immediately upon returning to work or as soon as administratively practicable (*no later than the first of the month following the return to work*)
- **Cafeteria plans** may require employees with short breaks of service (*30 days or less*) to be automatically reinstated in their same previous elections

Break in service *greater than 13 weeks*

→ May be treated as a new hire under ACA

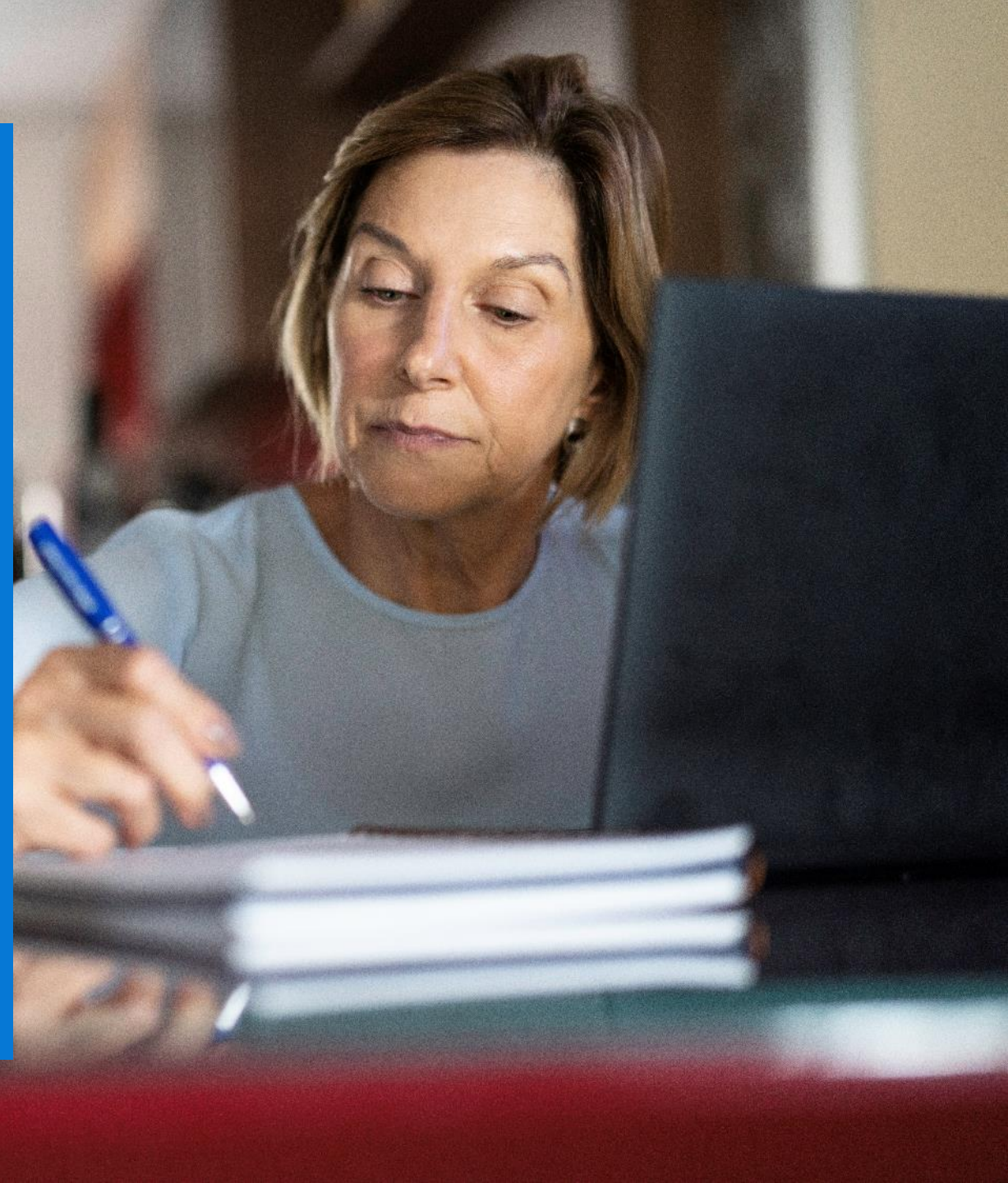
- Employees treated as new hires **can be required to satisfy the applicable waiting period** for benefits eligibility.
- Employers may choose to be more generous than required, but **must ensure rehire policy is included** in plan eligibility terms

2



ALE Requirements

Employer Mandate, Reporting and Penalties



Affordability and Safe Harbors

W-2 Safe Harbor (2F)

Required contribution for employee **not more than 9.78%** (*indexed for inflation*) of the employee's Form W-2, Box 1 wages

Employer estimates what Box 1 of the W-2 will reflect for year & backs into a premium below 9.78% of that amount

Must cover the entire calendar year; **cannot change mid-year**

Federal Poverty Level Safe Harbor (2G)

Employer assumes employee earns federal poverty level income for 48 contiguous states and Washington DC, **\$101.79, for calendar year plans, and \$102.62 for non-calendar year plans.** Higher thresholds apply in HI and AK.

Rate of Pay (2H)

Employee cost not to exceed 9.78% of hourly rate for hourly employees and monthly salary for salaried employees

Works well for many groups (*but not tipped employees or commission only employees*)

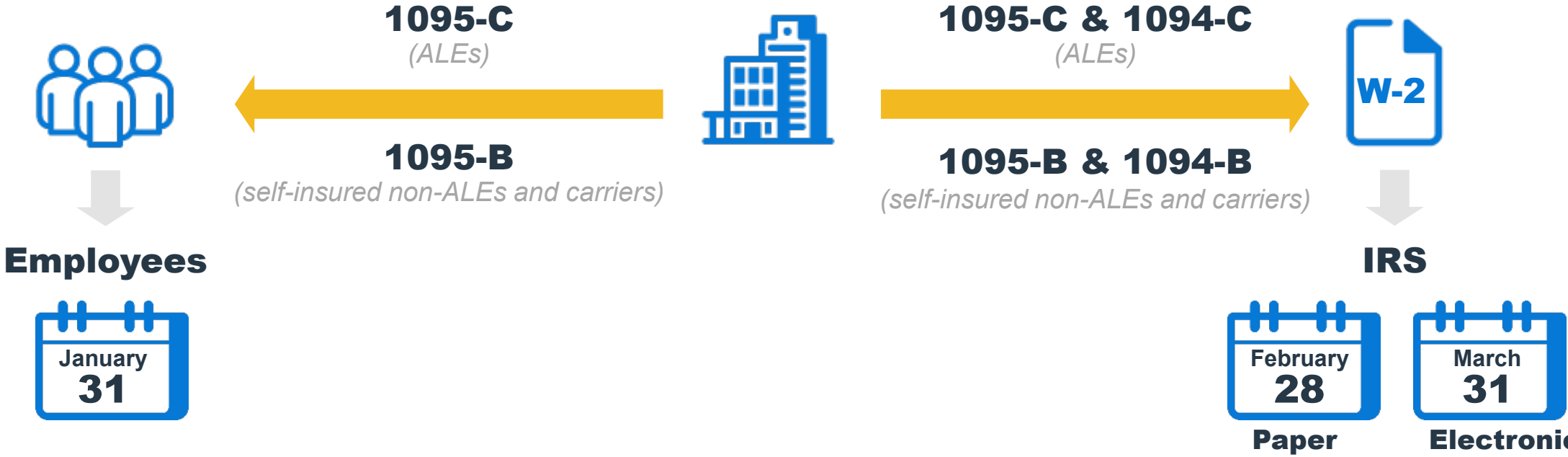
ALEs Have to Report

Applicable Large Employers (ALE; 50+ FTEs)

Form 1095 must be created and filed **for all full-time employees** (130 hrs / month or 30 hrs wk)

Under 50 FTEs **do not have to report** (unless self-insured)

All Self-Insured Employers





COVID-19 & The ACA



Reductions in Workforce due to COVID-19 and the ACA

Applicable Large Employers in 2020 who:

- Laid off employees and fell below 50 FT and FTE employees in 2020
- Furloughed employees and whose active employee count fell below 50 FT and FTE in 2020
- Closed divisions or locations in 2020 due to COVID-19

Do they retain their ALE status during 2020?

YES, an employer is deemed to be an ALE during all of 2020, regardless of how many FT and FTE employees they employ

Offer of **MEC to 95%** of FT employees

Offer of **MVP coverage** to FT employees

Offer of **Affordable coverage** to FT employees

Measure hours of employees under a measurement period

Comply with ACA reporting in 2021 for the 2020 calendar year

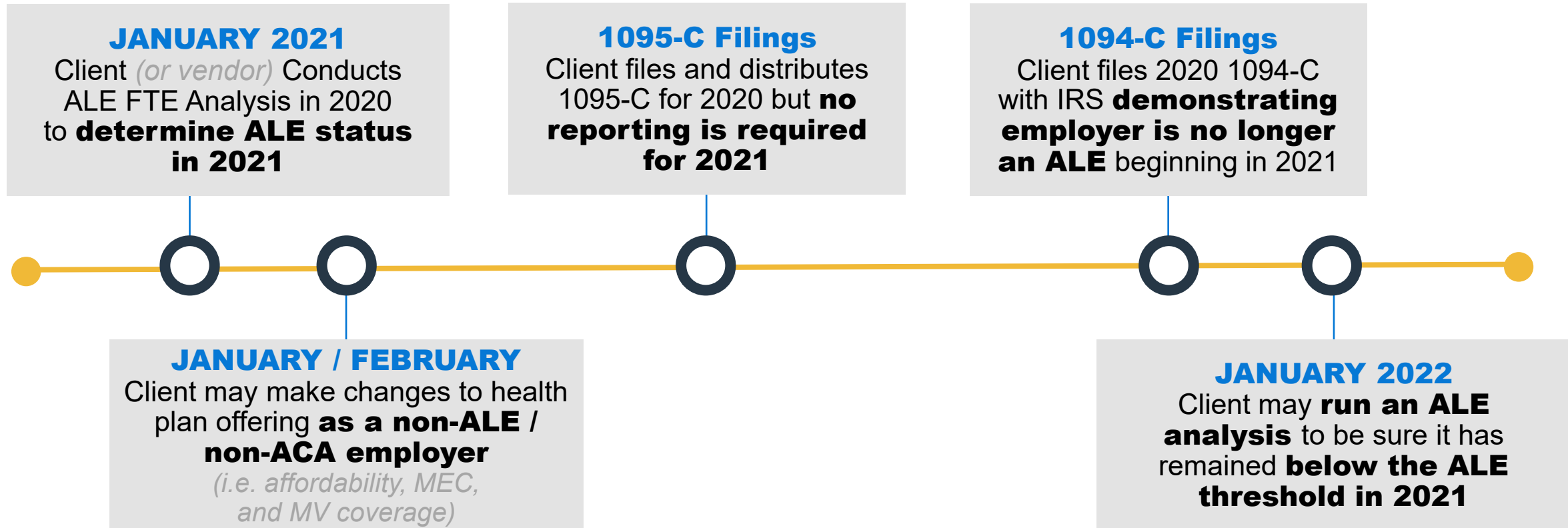
What happens in 2021?

Employer should assess if they will be an ALE in 2021

Remember:

- No hours are credited for employees who were laid off
- No hours are credited for employees who were on an unpaid furlough
- Include all hours the employee was paid (*sick, FFCRA, etc.*)

Losing ALE Status *Likely Timeline*



➔ **ACA Hack:** Employers that are certain that they will lose / gain ALE status in 2021 may consider plan changes now for 1/1/2021 effective dates.

ACA Reporting and Furloughs

Benefit Continuation – When can benefits end?

Look-Back Measurement Periods: If employee is placed in quarantine, is diagnosed with COVID-19, or hours are reduced during a stability period, note the following:

Regular FT employees experiencing a reduction of hours during a stability period.

(Offered benefits no later than 90-days from date of hire)

Coverage can terminate when:

Employee fails to pay their share of premiums **after being given a 30-day grace period to pay;**

The **employee voluntarily waives coverage** as they have access to other Minimum Essential Coverage (*MEC*);

Their employment terminates; or

Optional: “Downshift Rule:” Measure the employee’s hours for the three-month period following the reduction in hours of employment. **If during that three-month period following the reduction in hours, the employee works less than 130 hours each month, the employer can terminate their coverage and offer them COBRA.** Note that the employee would have to be measured under the monthly measurement method through the end of the stability period.

ACA Reporting and Furloughs

Benefit Continuation — When can benefits end? *(Continued)*

Employee was not offered benefits within 90-days from date of hire;

measures as full-time employee during an initial or a standard measurement period, and experiences a reduction in hours of employment during a stability period.

Coverage can only terminate in a stability period, in one of the following cases:

1. Employee fails to pay their share of premiums **after being given a 30-day grace period to pay;**
2. The **employee voluntarily waives coverage** as they have access to other Minimum Essential Coverage (*MEC*);
3. Their **employment terminates**

Monthly Measurement Period:

Any month during which employees **work less than 130 hours**, is a month during which an employer can choose to terminate coverage and offer COBRA. However, employers may agree to extend benefit coverage, if they wish and their plans allow it.

COVID-19 and ACA Reporting 1095-C

ACA Reporting Deadlines for 2020

Additional Relief Granted for 2020 Filings

NEW

- Extension granted to distribute returns to employees and covered participants- **March 2,2020, no additional extensions granted to file returns with the IRS**
- Good Faith penalty relief for 2020 Filings (*last year relief will be granted*)
- Exemption for issuers of MEC to distribute Forms 1095-B to covered participants (*insurance carriers and self-insured medical plans sponsored by non-ALEs*), filing with IRS is still required

Distribute Forms 1095-C to employees and other covered participants: **March 2,2020**

File paper returns with IRS: **March 1,2021** (if filing less than 250 returns)

E-file returns with IRS: **March 31,2021** (required if filing more than 250 returns)

Affordability Safe Harbors

Coverage must still be deemed to be affordable for employees who are deemed to be ACA FT employees.

Federal Poverty Level

Safe harbor is **not dependent on employee income** – no impact

May transition from 100% of FPL to Rate of Pay safe harbor

W-2

Employers **may not change** W-2 safe harbor during a calendar year

Box 1 of the W-2 is used to determine affordability based on **employee contribution percentage**

Employers that reduced hours / reduced wages **may face W-2 affordability issues**

Rate of Pay – Hourly Employees

Furlough

130 hours per calendar month **X hourly employee's rate of pay**

The calculation is **not altered by a leave of absence** or reduction in hours worked

Reduced Hourly Rate

The rate of pay is **applied separately to each calendar month**, rather than to the entire year

The employee's required contribution may be treated as affordable if it is affordable **based on the lowest rate of pay** for the calendar month multiplied by 130 hours

Salary / exempt employees who experienced pay cuts

Rate of Pay – Exempt / Salaried Employees

Affordability is **based on employees' monthly salary**, as of the first day of the coverage period
(instead of 130 multiplied by the hourly rate of pay)

If coverage is **offered during at least one day during the calendar month, the entire calendar month is counted** both for purposes of determining the assumed income for the calendar month and for determining the employee's share of the premium for the calendar month

Reminder: FLSA minimum salary must average \$35,568, annually



Examples




1095-C Part II—Employee Offer and Coverage

Incorrect codes and coding-combinations will trigger penalties

Part II Employee Offer of Coverage							Plan Start Month (Enter 2-digit number):						
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Required Contribution (see instructions)	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)													

Common Combos

 **NEW:** The 2020 draft instructions for Forms 1095-C include codes to report an offer made under an ICHRA. Codes 1L-1S will be used in Line 14 to report who was offered coverage (*employee, spouse and / or children*) and if the ICHRA was affordable under the ACA.

Line 14		Line 15	Line 16	
Description	Code		Description	Code
Employer offers at least Minimum Value Plan (MVP) coverage to the employee, spouse and children, and, the employee-only cost for the least expensive plan that is MEC and MVP is less than or equal to 9.86% (9.78% for 2020) of Federal Poverty Level ("FPL").	1A	Leave Blank	Employee elects the benefit	2C
			Employee rejects the benefit	2G
Employer offers at least MVP coverage to the employee, spouse and children, and, the employer is NOT using the (FPL) Affordability safe harbor to determine Affordability.	1E	Enter Employee Cost	Employee elects the benefit	2C
			Employee rejects the benefit	2F or 2H or Leave Blank
Employee was not offered MEC by the employer during any day in the month, i.e., commonly used for months prior to the employee's hire date and / or after termination of employment.	1H	Blank	Employee is not employed for any day in the month	2A
Employee was in his / her waiting period or in a look-back measurement period or administrative period before benefit coverage is offered.	1H	Blank	Employee is on a waiting period, a look-back measurement period or an administrative period	2D
Employer does not offer coverage to a full-time employee.	1H	Blank	No other lines are completed as the employer cannot use any other codes for line 16	Blank
Employee / individual is covered under a self-funded medical plan as a part-time employee, COBRA beneficiary, a nonemployee (<i>partner</i>) or a retiree for the entire calendar year.	1G	Blank		Blank
Employee is offered MVP coverage; dependent is not offered at least MEC. Employee's spouse is offered on a "conditional" basis, at least MEC.	1J	Enter Employee Cost		2C or Blank
Employee is offered MVP coverage; dependent is offered coverage that is at least MEC and spouse is offered on a "conditional" basis at least MEC.	1K	Enter Employee Cost		2C or 2F /2G / 2H
Only the Employee is offered MEC that is MVP , no coverage extended to spouse or dependent children.	1B	Enter Employee Cost	Enter appropriate Code 2F, 2H or 2G if employee waives, or 2C if employee enrolls in plan	2C or 2F /2G / 2H
Employer only offers MEC that is not MVP.	1F	Enter Employee Cost	If the employee waives MEC coverage leave blank; enter Code 2C if enrolls	Blank or 2C

PTC Listing Notable Sections

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: [REDACTED] Employer ID number: [REDACTED] Tax Year: 2015

Employee Name	SSN (last 4 digits)	All 12 months Indicator Code (Form 1095-C, lines 14 and 16 combined)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Additional Information Attached
[REDACTED]	9051	1E/	1E/	1E/	1H/2A	1H/2A	1H/2A	1H/2A	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	
[REDACTED]	2714	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1E/2D	1E/	1E/	1E/	1E/	
[REDACTED]	9966	NoPTC	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1E/2D	1E/	1E/	1E/	1E/	
[REDACTED]	7130	1E/2D	1E/2D	1E/	1E/	1E/	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	
[REDACTED]	6685	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1E/2D	1E/	1E/	1E/	1E/	
[REDACTED]	6677	NoPTC	NoPTC	1H/2A	1H/2A	1H/2A	1H/2A	NoPTC	1E/2D	1E/2D	1E/	1E/	1E/	1E/	
[REDACTED]	0493	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	1H/2A	1H/2A	1E/2D	1E/	1E/	1E/	
[REDACTED]	4494	1E/	1E/	1E/	1H/2A	1H/2A	1H/2A	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	
[REDACTED]	0177	NoPTC	NoPTC	1E/	1E/	1E/	1H/2A	1H/2A	1H/2A	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	
[REDACTED]	4501	NoPTC	NoPTC	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1E/2D	1E/	1E/	1E/	1E/	
[REDACTED]	8404	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1E/2D	1E/	1E/	1E/	1E/	
[REDACTED]	9016	NoPTC	NoPTC	1E/2D	1E/	1E/	1E/	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	1H/2A	
[REDACTED]	9069	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	NoPTC	1E/	1E/	1E/	1H/2A	

1E/ 1E/ 1E/



Made an offer, but no safe harbor or enrollment indicator

1E/2D



Offer and 2-code explanation - limited non-assessment period

NoPTC



No Subsidy -> No Worries

1H/2A



No offer but with 2-code explanation - not employed

Furlough (i.e. Leave of Absence)

Scenario



Brenda worked as a Full-Time exempt Bank teller at ABC Bank until she was placed on an unpaid furlough on April 10, 2020. ABC Bank offers affordable (*Rate of Pay Safe Harbor*), minimum value coverage, and allows furloughed employees to remain covered under ABC's self-insured medical plan (with the stop-loss carrier's approval). Brenda paid her portion of the premium while on furlough. ABC called Brenda back to work starting July 1, 2020.

1095-C Coding

1E and **2C** for all 12 months

Rehire / Coverage Reinstatement Rule

No impact – Brenda never lost coverage while on furlough

Affordability

Brenda's affordability will not be impacted by her leave of absence because her rate of pay never changed.

1E - Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse.

2C - Employee enrolled in coverage

Termination and Rehire

Scenario



Charles was hired by Acme Manufacturing in 2018 and remained employed through May 11, 2020 when Acme terminated his employment because of COVID. Acme offers affordable (*W-2 Safe Harbor*), minimum value coverage to their active employees. Charles had coverage at the time he was terminated and did not elect COBRA. Acme rehired Charles on August 1st and offered him coverage as of that date.

1095-C Coding

January – May 30, 2020: **1E** and **2C**

June and July: **1H** and **2A**

August – December: **1E** and **2C**

(assuming Charles remains employed through the end of the year)



Rehire / Coverage Reinstatement Rule

Charles was separated for less than 13 weeks and therefore must be immediately eligible for coverage under the Acme Plan.

Affordability

The plan was affordable under the W-2 safe harbor (*2F*), as the employer excludes the months the employee was not employed (*laid off*) in computing the employee's wage under Box 1 of the W-2.

1E - Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse.

2C - Employee enrolled in coverage

1H - No offer of coverage

2A - Not employed

Full-Time Employee & Furlough (*i.e. Leave of Absence*)

Scenario



Juan worked for Bob's BBQ as a Full-Time server (*guaranteed 30 hrs. each week*) Bob's BBQ uses the Monthly Measurement Method. On March 31st, Juan was put on furlough. Although the health insurance carrier allowed the employer to continue to offer coverage to all furloughed employees Bob's BBQ just couldn't afford to continue to pay the premiums and neither could the employees. Bob's BBQ offered his furloughed employees COBRA for reduction in hours beginning on April 1, 2020. On August 1st, Bob's BBQ was able to re-open his dining room and brought back Juan and many other furloughed employees. Juan wants his coverage back, immediately. What should Bob's BBQ do? And how does Bob's BBQ handle the impending tax filings?

1095-C Coding

January – March: **1E / 2C**

April – July: **1H / 2B**

August – September: **1H / 2D**

October – December: **1E / 2C (if Juan enrolls)**

(assuming Juan remains actively at work, through the waiting period)



Rehire / Coverage Reinstatement Rule

Juan was furloughed for more than 13 weeks without any credited hours of service – this means Juan is "new hire" for health insurance purposes and must satisfy a new waiting period

1E - Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse.

2C - Employee enrolled in coverage

What if Juan was a VHE?

Juan is VH



When Juan was furloughed, he was in the middle of a Stability Period and his coverage remained in force throughout his leave of absence **because the carrier allowed continued coverage.**

1095-C Coding

1E / 2C

Rehire / Coverage Reinstatement Rule

N / A – Juan never lost coverage

Affordability

If Bob's BBQ uses the W-2 box 1, affordability method he may be ok – Juan was out of work for 4 calendar months and the affordability will essentially be based on 8 months instead of 12 as a percentage of the total Box 1.

Rate of pay – Bob's BBQ may also be ok because Juan's pay was never reduced.

VHE – Furlough and Waiver of Coverage

Scenario



Jennifer was hired as a variable hour employee by AAA Technology on May 22, 2017. She qualified for benefits based on her hours worked during her Initial Measurement Period and each subsequent Standard Measurement Period. Her coverage is affordable under the rate of pay safe harbor, but she waived her right to enroll as she has coverage under her spouse's plan. On April 9, 2020 she is furloughed during a Stability Period (*she previously measured as a full-time employee*). Her employer would have continued her coverage if she had enrolled in coverage. She was reinstated to work on June 6, 2020 and not offered benefits upon reinstatement.

1095-C Coding

January – March: **1E / 2H**
April– December: **1E / 2H**

Rehire / Coverage Reinstatement Rule

The employer is not required to offer benefits to an employee who originally waived benefits even if they are rehired within 13 weeks.

Affordability

Rate of pay is unchanged due to the furlough

VHE and Stability Period

Scenario



Leslee was hired January 1, 2019 as a variable-hour server at Best Bodacious Burgers (*BBB*). Leslee was a hard worker and qualified for health insurance after completion of her one-year Initial Measurement Period. Leslee's Stability Period runs from January 1, 2020 through December 31, 2020. In April 2020, BBB placed Leslee on furlough. However, BBB continued to pay 100% of all costs of Leslee's health insurance during her furlough because the carrier had made a special exception. On October 1st, the carrier exception ended and BBB has announced that it will no longer subsidize Leslee's cost of her insurance (*BBB will pay its portion to ensure the plan remains affordable – the employer uses the rate of pay for affordability*). BBB will continue Leslee's coverage under COBRA, but only require Leslee to pay the active premium. Although Leslee will remain employed through the end of the year, Leslee does not intend to pay for her coverage after her employer stops paying her share of the premiums.

1095-C Coding

January – September: **1E / 2C**
October– December: **1E / 2H**

Rehire / Coverage Reinstatement Rule

N / A – While Leslee was furloughed she was never terminated by her employer.

Affordability

The plan remains affordable because the employer continued to pay its share of the premium and Leslee's rate of pay never changed.

VHE and Stability Period

Scenario



Leslee was hired January 1, 2019 as a variable-hour server at Best Bodacious Burgers (*BBB*). Leslee was a hard worker and qualified for health insurance after completion of her one-year Initial Measurement Period. Leslee's Stability Period runs from January 1, 2020 through December 31, 2020. In April 2020, BBB placed Leslee on furlough and the carrier is allowing continued coverage for employees on furlough. However, BBB continued to pay 100% of all costs of Leslee's health insurance during her furlough. As of October 1, 2020, BBB required Leslee to pay her portion of the active premium (*affordability is assessed based on the rate of pay safe harbor*). **Although Leslee will remain employed (and continue to be benefit-eligible) through the end of the year, Leslee does not intend to pay for her coverage after her employer stops paying 100% of the premiums.** Leslee's coverage ends on October 1, 2020 due to failure to pay premiums. BBB does not offer COBRA coverage to Leslee.

1095-C Coding

January – September: **1E / 2C**
October– December: **1E / 2H**

Rehire / Coverage Reinstatement Rule

N / A – While Leslee was furloughed she was never terminated by her employer.

Affordability

The plan remains affordable because the employer continued to pay its share of the premium and Leslee's rate of pay never changed.

COBRA Note: If Leslee loses her group coverage through BBB because she failed to pay for her portion of the health insurance she will not be eligible for COBRA – failure to pay is not a COBRA qualifying event.

4

State Individual Mandate Reporting Requirements



CA Individual Mandate Reporting

Self-insured employers will be required to file with the CA Franchise Tax Board a copy of their Forms 1095-C

2020 Individual Mandate Reporting

Who: Insurance carriers and self-funded medical plans (*ICHRAs, level-funded and MEC plans*) covering CA residents in 2020

When: Forms 1095-C must be distributed to covered participants no later than 1/31/2021, copies must be filed with the CA Franchise Tax Board by March 31, 2021.

How: On paper if issuing less than 250 forms, if issuing 250 Forms or more, reporting to FTB must be made in electronic format via [FTB File Exchange System](#) (*MEC FX Portal launched 10/5/2020*). Employers will be required to preregister with the FTB (*MEC FX Portal*) prior to filing. Production files accepted as of January 4, 2021.

Next Steps:

- Contact ACA reporting vendor to inquire if they will be assisting with state filing requirements
- If they will not assist, register to become a direct filer via MEC FX Portal or mail paper copies to the FTB, request from ACA vendor file feeds to submit to the CA FTB

NJ and WA D.C Individual Mandate Reporting

NJ – 2020 Individual Mandate Reporting

- **WHO:** Insurance carriers and self-funded medical plans (*ICHRAs, level-funded and MEC plans*) covering NJ residents in 2020
- **WHEN:** Forms 1095-C/B must be distributed to covered participants no later than 3/2/2021, copies must be filed with the NJ Division of Taxation no later than 3/31/21.
- **HOW:** Filing electronically via the Division of Revenue and Enterprise Services' (*DORES*) MFT Secure Transport service. Paper filings are not accepted.

WA D.C. – 2020 Individual Mandate Reporting

- **WHO:** Insurance carriers and self-funded medical plans (*ICHRAs, level-funded and MEC plans*) covering D.C. residents in 2020.
- **WHEN:** Forms 1095-C/B must be distributed to covered participants no later than 3/2/2021, copies must be filed with the Office of Tax and Revenue no later than 30 days after the deadline established by the IRS to file returns, including extensions (*April 30, 2021*).
- **HOW:** Filing electronically via [MyTax.DC.gov](https://mytax.dc.gov)

RI and VT Individual Mandate Reporting

RI – 2020 Individual Mandate Reporting

- **WHO:** Insurance carriers and self-funded medical plans (*ICHRAs, level-funded and MEC plans*) covering RI residents in 2020
- **WHEN:** Forms 1095-C/B must be distributed to covered participants by 1/31/2021, copies must be filed with the RI Division on Taxation date TBD.
- **HOW:** Unknown

VT – 2020 Individual Mandate Reporting

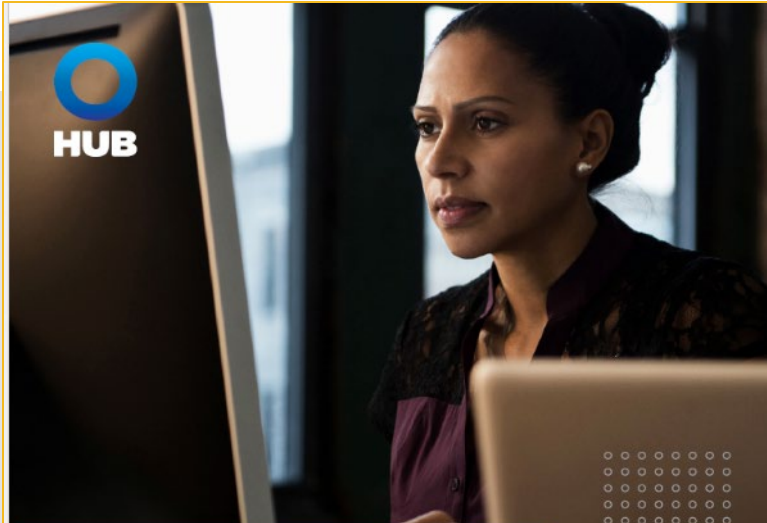
- None at this time



How **HUB** can help.



HUB Materials



HUB

Decoding the Codes

Understanding the IRS Form 1095-C
ACA Reporting Codes

hubemployeebenefits.com

IRS ACA Employer Mandate Enforcement Employer Response FAQs

Introduction

The IRS has begun enforcement activity on the Affordable Care Act ("ACA") Employer Shared Responsibility Penalty ("ESRP"), sometimes called the "Play or Pay employer mandate." The first assessments may relate to calendar year 2015 (relying on filings made in the first quarter of 2016). These FAQs provide some considerations on how to respond if you receive a proposed assessment.

TABLE OF CONTENTS

- I. General Questions & Response Tips
- II. Suggestions for Documentation
- III. Exemptions, Transition Relief, and Other Information

I. General questions & response tips

Q1. I received an IRS Letter 226J saying I may owe an ACA ESRP. What do I do now?

First, review the letter carefully. Confirm the calendar year that the IRS is reviewing (for example, 2015) to make sure you review and obtain the appropriate employee records. Contact the relevant vendors for that year to gather the information that will assist you in responding to IRS Letter 226J (as discussed more fully in Section II).


You may want to engage an attorney, accountant, or other tax advisor who is familiar with the ACA penalties to help you draft a response. Your HUB Chief Compliance Officer is available to speak with you generally about the enforcement process, but cannot compile or draft your response to the IRS. Your Account Manager may be able to help you gather some of the health insurance documentation you may need to respond.

You should have 30 days from the date of the letter to respond to the IRS. If you need more time, you may want to contact the IRS agent to ask if you can request an extension and explain why you need one. You should consult your tax advisor on whether to request an extension. The IRS has not said whether they will grant extensions, although the standard IRS Form 14764 provides a phone number for you to call if you want to request additional time. The presence of that phone number suggests that the IRS will at least entertain requests for additional time.

Q2. Is this a bill/invoice/assessment?

No. The Letter 226J is a notice from the IRS indicating that you may be subject to a penalty under the ESRP. You have the opportunity to review the information provided by the IRS and either contest the penalty or confirm that the penalty is due. In short, this is the beginning of a dialogue.

HUB



FAQ

FREQUENTLY ASKED QUESTIONS

Applicable Large Employer

HUB

Thank You

For more information visit hubinternational.com

