



ACA Reporting

Final Forms & Instructions for 2022 and Final Regulations Granting Permanent Relief for 2023 & Beyond

Reporting for the Affordable Care Act's (ACA) employer mandate is around the corner. The final forms and instructions can be found here:

ALEs	Non-ALE
Form 1094-C	Form 1094-B
Form 1095-C	Form 1095-B
Instructions	Instructions

Final Regulations Make Permanent an Automatic Extension to Furnish Forms

On December 12, 2022, the IRS issued a final rule providing a permanent automatic 30-day extension for furnishing individuals their Form. The due date for furnishing Form 1095-C is automatically extended from January 31, 2023, to March 2, 2023. Thus, no additional extensions will be granted for failing to meet the March 2nd furnishing deadlines going forward.

Note: The deadlines for filing forms to the IRS remains the same. The only exception is if the deadline falls on a weekend or holiday, moving that year's deadline to the next business day.

Final Regulations Provide Some Employers an Alternative Method for Furnishing Forms

For years in which the federal individual mandate penalty remains \$0, non-ALEs who sponsor self-insured/level-funded plans and ALEs filing 1095-Bs (e.g. for those who are COBRA participants, retirees, or part-time employees) may satisfy their furnishing obligation by posting a clear and conspicuous notice on its website in a location accessible to individuals. The notice must state that the individual can request a copy of their 1095-B upon request, providing the appropriate email address, physical address, and telephone number where the request can be sent. This notice must remain online and accessible through October 15 of the following calendar year (October 15, 2024, for 2022 Form 1095-B).

Within 30 days of receiving the request, the individual must be provided their 1095-B.

Note: This relief is only at the federal level. This does not apply to states with individual mandate reporting obligations.

The following table highlights the deadlines for furnishing and filing Forms.

1095-C Due to Participants	March 2
1094-C & 1095-Cs Due to IRS (Filing on paper)	February 28
1094-C & 1095-Cs Due to IRS (Filing electronically)	March 31
1095-B Due to Participants (but see relief on page 1)	March 2
1094-B and 1095-Bs to IRS (Filing on paper)	February 28
1094-B and 1095-Bs to IRS (Filing electronically)	March 31

Affordability

To avoid potential tax penalties, the employer mandate requires ALEs to offer minimum value medical coverage to all full-time employees and their dependents (up to age 26) and requires that the employee's cost for the employee-only minimum value plan be "affordable." Since employers are unable to know whether coverage is affordable for any particular employee, the IRS allows employers to use a "safe harbor" which is indexed annually.

Affordability Percentage Indexed	9.5%*
Plan Years Beginning in 2021	9.83%
Plan Years Beginning in 2022	9.61%
Plan Years Beginning in 2023	9.12%

An employer may defend against a potential penalty triggered based on unaffordable coverage by relying on an affordability safe harbor. There are three:

- **The W-2 safe harbor,**
- **The rate of pay safe harbor, and**
- **The federal poverty level safe harbor**

W-2

Under the W-2 safe harbor, coverage is affordable if the employee's contribution for self-only coverage is less than the indexed affordability percentage of W-2 (Box 1) income for the current year. That means the determination is made after the calendar year ends. Employers cannot make any adjustment for unpaid leaves, which increases the chance the employee's coverage will be unaffordable.

Employers that choose to use this method may not change the employee's contribution level (dollar amount or percentage) during the calendar year or during the plan year if the plan operates on a non-calendar year.

Rate of Pay

Under the rate of pay safe harbor, coverage is affordable for an hourly employee if the hourly employee's contribution for self-only coverage is less than the indexed affordability percentage of the employee's lowest rate of pay during the calendar month, times an assumed 130 hours worked during a month (regardless how many hours the employee actually works). Employers often forget that the 130 hours is the standard multiplier in the formula and cannot be increased if the employee works more than 130 hours in the month. If an employee works one day in a month, he or she is considered to have worked the entire month for purposes of both the employee's share of the premium and assumed income for the calendar month.

For salaried employees, the monthly salary at the beginning of the coverage period is used. If the salaried employee is paid other than monthly, the employer may use any reasonable method to convert a payroll period to monthly salary.

If the salaried employee’s monthly salary is reduced during the year (even if due to a reduction in hours) the rate of pay method may not be used.

This method excludes tips and overtime and disregards any pay increase the employee may receive during the year. As a result, this method is often not viable for commissioned or tipped employees, such as salespeople and hospitality workers.

FPL

Under the federal poverty level (FPL) safe harbor, coverage is affordable if the employee’s contribution for self-only coverage is less than the indexed affordability percentage of FPL as of the start of the plan year for the state in which the employee lives. The FPL method does not look at the employer’s actual hours or pay, so it does not need to be adjusted for leaves of absence.

FPL figures are released near the end of January, an employer may (but is not required) to use the FPL in effect within the six months before the start of the plan year.

Which Methods?

Employers are often left trying to decide which method is right for them and their employees. The W-2 method is the most flexible but least predictable and allows for no adjustments. The requirement to use Box 1 can lead to a significant decrease in an employee’s pay if the employee makes large pre-tax contributions. It is also deflated if an employee takes a long unpaid leave of absence.

The rate of pay will underestimate income for full time employees (due to capping at 130 hours) and cannot be used for employees who are tipped or paid on commission due to low base wage. Because it is designed based, it does eliminate the need to track each employee’s affordability separately and instead can be calculated based on the rates of pay the employer uses for entire groups of employees.

The FPL is the most conservative method for employers, allows for the easiest reporting, but it is also the most expensive method for employers. The affordability is based solely on the required affordability percentage and the government’s set FPL for the mainland for the year.

Employers can change the safe harbor chosen each year. Whatever method is chosen, it is imperative that employers retain a copy of the Forms that were furnished and filed along with supporting documentation (e.g., plan design and contribution structure, employment records, and eligibility provisions) to rebut a proposed penalty.

Updated January 21, 2023

This document was authored by the Alera Group Compliance team. Alera Group based in Deerfield, IL serves thousands of clients nationally in employee benefits, property and casualty, risk management and wealth management. Alera Group is the 15th largest independent insurance agency in the country.

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