

It's Time for the 1095's!



*Maine Municipal
Employees Health Trust*

1-800-852-8300

www.mmeht.org

The Difference Is Trust

January 2020

Today's Agenda

- Large Employer Reporting
- Employer Shared Responsibility
- Affordability and Buyouts
- Letter 226J
- The Future of the ACA

Large Employer Reporting on Coverage / Affordability

- Applies to Applicable Large Employers; i.e. employers with 50 or more full-time + full-time equivalent employees
 - “Full-time” => 30 or more hours per week
 - Can also calculate at 130 hours/month
 - “Full-time equivalents” => less than 30 hours per week
 - Calculate “hours of service” for all of these employees in each month
 - *If any “part-timer” worked between 120 and 130 hours in a month, count it as 120 hours*
 - Add all hours together
 - Divide by 120
 - This will tell you how many full-time equivalents you have for each month

Employer Reporting - Form 1095-C

- Form 1095-C => Employer-Provided Health Insurance Offer and Coverage
- A Form 1095-C must be provided:
 - To each Employee who was a Full-Time Employee, for **any month** during calendar year 2019
 - *Full-Time Employee = Employee worked an average of at least 30 hours per week (130 hours per month) during any calendar month*
 - Regardless of whether or not Employee was covered under the Employer's Health Plan

Employer Reporting – Form 1095-C

- Timeframe for providing forms to employees
 - ACA says by January 31 each year
 - For 2019 Forms: On or before **March 2, 2020**
 - *IRS Notice 2019-63 (issued 12/2/2019) provided extension*
- Final form issued December 2019
 - Form: <https://www.irs.gov/pub/irs-pdf/f1095c.pdf>
 - Instructions: <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>

Employer Reporting - Changes for 2019

- Form 1095-C - **No Changes** to 2019 Forms!
- Form 1094-C - **No Changes** to 2019 Forms!

Form 1095-C (Large Employer)

600118

Form 1095-C
Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

▶ Do not attach to your tax return. Keep for your records.

▶ Go to www.irs.gov/Form1095C for instructions and the latest information.

VOID

CORRECTED

OMB No. 1545-2251

2019

Part I Employee						Applicable Large Employer Member (Employer)					
1 Name of employee (first name, middle initial, last name)			2 Social security number (SSN)			7 Name of employer			8 Employer identification number (EIN)		
3 Street address (including apartment no.)						9 Street address (including room or suite no.)			10 Contact telephone number		
4 City or town		5 State or province		6 Country and ZIP or foreign postal code		11 City or town		12 State or province		13 Country and ZIP or foreign postal code	

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)													

Part III Covered Individuals				If Employer provided self-insured coverage, check the box and enter the information for each individual enrolled in coverage, including the employee. <input type="checkbox"/>												
	(a) Name of covered individual(s) First name, middle initial, last name	(b) SSN or other TIN	(c) DOB (if SSN or other TIN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
					Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Employer Reporting - Form 1095-C

Part I:

- Reporting includes:
 - Employee's name, address, and SSN
 - SSN may be truncated (5 asterisks, last 4 numbers)
 - May not truncate SSN on forms filed with IRS
 - Employer's name, address, phone number and EIN
 - May not truncate EIN on forms filed with IRS
- Upon written request, MMEHT will provide participating employer groups with a list of their covered employees (and dependents)
 - Will include coverage, by month, for all of 2019
 - Email awright@memun.org with your request

Employer Reporting – Form 1095-C

Part II:

- Reporting includes:
 - Plan Start Month
 - First month of the plan year
 - Optional for 2019 (same as in past years)
 - For MMEHT members, this is 01 (January)
 - Month-by-month information regarding:
 - Offer of Coverage
 - Employee Contributions
 - Safe Harbor and Other Relief

Employer Reporting – Form 1095-C

Offer of Coverage (Line 14)

- Applicable Large Employers (ALEs) will need to complete this information for each employee who worked an average of at least 30 hours per week (130 hours per month) during any calendar month during 2019, whether or not the employee is enrolled in the health plan
- “Offer of coverage” only applies if coverage offered would provide coverage to employee every day of the calendar month
- A code must be entered for every month of the year, even if employee was not a full-time employee for one or more months of the year
- If same code applies for all 12 months of year, employer may either enter code in the “All 12 Months” box or enter code in boxes for individual months

Employer Reporting – Form 1095-C

Offer of Coverage (Line 14)

- The Codes in this section (Code Series 1) specify the type of coverage (if any) offered to:
 - Employee
 - Employee's spouse
 - Employee's dependent children
- If employee terminates employment and is offered COBRA – do not report COBRA as offer of coverage
- But – if employee's hours are reduced and is offered COBRA – report COBRA as offer of coverage

Employer Reporting – Form 1095-C

Offer of Coverage (Line 14) – The Codes

- **1A. Qualifying Offer:** Minimum essential coverage providing minimum value offered to full-time employee with Employee Required Contribution equal to or less than 9.5% (as adjusted) of mainland single federal poverty line and at least minimum essential coverage offered to spouse and dependent(s).
- This means – minimum essential, minimum value, **affordable** coverage
 - Note: If you use Code 1A, you will not enter any contribution information on Line 15, and you may not have to enter anything on Line 16 either
 - Use of this Code 1A is optional – if you don't use it, what should you use instead?

Employer Reporting - Form 1095-C

Offer of Coverage (Line 14) - The Codes

- **1B.** Minimum essential coverage providing minimum value offered to employee only.
- **1C.** Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) (not spouse).
- **1D.** Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to spouse (not dependent(s)).
 - Use code 1J if coverage for spouse was offered conditionally.
- **1E.** Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse.
 - Use code 1K if coverage for spouse was offered conditionally.

Employer Reporting – Form 1095-C

Offer of Coverage (Line 14) – The Codes

- **1F.** Minimum essential coverage NOT providing minimum value offered to employee; employee and spouse or dependent(s); or employee, spouse and dependents.
- **1G.** Offer of coverage for at least one month of the calendar year to an individual who was not an employee for any month of the calendar year or to an employee who was not a full-time employee for any month of the calendar year (which may include one or more months in which the individual was not an employee) and who enrolled in self-insured coverage for one or more months of the calendar year.
 - Code 1G applies for the entire year or not at all.

Employer Reporting – Form 1095-C

Offer of Coverage (Line 14) – The Codes

- **1H.** No offer of coverage (employee not offered any health coverage or employee offered coverage that is not minimum essential coverage, which may include one or more months in which the individual was not an employee).
- **1I.** Reserved (not used in 2019).

Employer Reporting – Form 1095-C

Offer of Coverage (Line 14) – The Codes

- **1J.** Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage conditionally offered to spouse; minimum essential coverage not offered to dependent(s).
- **1K.** Minimum essential coverage providing minimum value offered to employee; at least minimum essential coverage offered to dependent(s); and at least minimum essential coverage conditionally offered to spouse.
 - Conditional offer of spouse coverage: Offer of coverage for spouse subject to one or more reasonable, objective conditions (e.g., offer to cover spouse only if spouse is not eligible for another employer's group health plan or Medicare) – regardless of whether or not spouse met the required condition(s)
 - Refers to offer of coverage only – not to payment of premium
 - May affect spouse's eligibility for premium tax credit (Marketplace)

Employer Reporting - Form 1095-C

Employee Contributions (Line 15)

- Complete line 15 only if code 1B, 1C, 1D, 1E, 1J, or 1K is entered on line 14 either in the “All 12 Months” box or in any of the monthly boxes.
 - Do not complete Line 15 if you used Code 1A in line 14.
- Enter the amount of the Employee Required Contribution – that is, the employee share of the monthly cost for the lowest-cost self-only minimum essential coverage providing minimum value that is offered to the employee.
 - Enter the amount including any cents.

Employer Reporting – Form 1095-C

Employee Contributions (Line 15)

- If the employee is offered coverage but is not required to contribute any amount towards the premium, enter “0.00” (do not leave blank).
- If the employee share of the lowest-cost monthly premium amount for self-only coverage was the same amount for all 12 calendar months, enter that monthly amount in each monthly box or enter that monthly amount in the “All 12 Months” box and do not complete the monthly boxes.
- If the employee share of the lowest-cost monthly amount was not the same for all 12 months, enter the amount in each calendar month for which the employee was offered minimum value coverage.

Employer Reporting - Form 1095-C

Employee Contributions (Line 15)

- For line 15, enter the **lowest-cost** monthly premium for **self-only** minimum essential coverage providing minimum value that is offered to the employee.
- **This amount may not be the amount the employee is paying for the coverage, for example, if the employee chose to enroll in more expensive coverage such as family coverage, or if the employee is eligible for, and enrolled in, certain other healthcare arrangements (such as a more expensive plan).**

Employer Reporting – Form 1095-C

Safe Harbor and Other Relief (Line 16)

- The Codes in this section (Code Series 2) are used to indicate which (if any) of the following situations applied to the employee, for each month of the year:
 - The employee was not employed or was not a full-time employee;
 - The employee was enrolled in the minimum essential coverage offered;
 - The employee was in a Limited Non-Assessment Period;
 - The ALE Member met one of the affordability safe harbors with respect to the employee; or
 - The ALE Member was eligible for multiemployer interim rule relief for this employee.

Employer Reporting – Form 1095-C

Safe Harbor and Other Relief (Line 16)

- For each calendar month, enter the applicable code, if any, from Code Series 2. You may enter only one code from Code Series 2 per calendar month.
- If the same code applies for all 12 calendar months, enter the applicable code in each monthly box or enter the code in the “All 12 Months” box. If none of the codes apply for a calendar month, leave the line blank for that month.
- If no indicator code applies – leave line 16 blank.

Employer Reporting – Form 1095-C

Safe Harbor and Other Relief (Line 16)

- Employer may choose whether or not to enter a code on line 16 for any month for which code 1A (Qualifying Offer) is entered on line 14. A Qualifying Offer is, by definition, treated as an offer that falls within the affordability safe harbor even if no code is entered on line 16.
- And remember – if code 1A (Qualifying Offer) is entered on line 14 – leave line 15 blank.

Employer Reporting – Form 1095-C

Safe Harbor and Other Relief (Line 16)

- There is no specific code to enter on line 16 to indicate that a full-time employee offered coverage either did not enroll in the coverage or waived the coverage.
- Use the appropriate code from the prescribed list (2A – 2H).
- If no code fits for line 16 – leave it blank!

Employer Reporting - Form 1095-C

Safe Harbor and Other Relief (Line 16) - The Codes

- **2A.** Employee not employed during the month. Enter code 2A if the employee was not employed on any day of the calendar month. Do not use code 2A for a month if the individual was an employee of the ALE Member on any day of the calendar month. Do not use code 2A for the month during which an employee terminates employment with the ALE Member.
- **2B.** Employee not a full-time employee. Enter code 2B if the employee is not a full-time employee for the month and did not enroll in minimum essential coverage, if offered for the month. Enter code 2B also if the employee is a full-time employee for the month and whose offer of coverage (or coverage if the employee was enrolled) ended before the last day of the month solely because the employee terminated employment during the month (so that the offer of coverage or coverage would have continued if the employee had not terminated employment during the month).

Employer Reporting – Form 1095-C

Safe Harbor and Other Relief (Line 16) – The Codes

- **2C.** Employee enrolled in health coverage offered. Enter code 2C for any month in which the employee enrolled for each day of the month in health coverage offered by the ALE Member, regardless of whether any other code in Code Series 2 might also apply (for example, the code for a section 4980H affordability safe harbor) except as provided below.
Do not enter 2C in line 16 for any month in which the multiemployer interim rule relief applies (enter code 2E). Do not enter code 2C in line 16 if code 1G is entered in line 14. Do not enter code 2C in line 16 for any month in which a terminated employee is enrolled in COBRA continuation coverage or other post-employment coverage (enter code 2A). Do not enter code 2C in line 16 for any month in which the employee enrolled in coverage that was not minimum essential coverage.

Remember – Code 2C trumps all other codes in line 16!

Employer Reporting – Form 1095-C

Safe Harbor and Other Relief (Line 16)

- Sometimes more than one code could apply.
 - Say, for example, that John was employed full-time January – September, and part-time October – December. He was enrolled in health insurance coverage for the entire year, even during those months in which he did not work full-time. Even though both code 2B (employee not a full-time employee) and code 2C (employee enrolled in health coverage offered) could apply for October - December, code 2C will always take priority.
 - The same applies to the “safe harbors” (codes 2F, 2G, and 2H). If the employee is enrolled in minimum essential coverage, regardless of which safe harbor method is used, enter code 2C on line 16.

Employer Reporting – Form 1095-C

Safe Harbor and Other Relief (Line 16) – The Codes

- **2D.** Employee in a section 4980H(b) Limited Non-Assessment Period. Enter code 2D for any month during which an employee is in a Section 4980H(b) Limited Non-Assessment Period.

If an employee is in an initial measurement period, enter code 2D (employee in a section 4980H(b) Limited Non-Assessment Period) for the month, and not code 2B (employee not a full-time employee).

- Limited Non-Assessment Period -> Waiting Period.
- **2E.** Multiemployer interim rule relief.
 - Generally applies to Taft Hartley plans. Does not apply to MMEHT.

Employer Reporting – Form 1095-C

Safe Harbor and Other Relief (Line 16) – The Codes

- **2F.** Section 4980H affordability Form W-2 safe harbor. Enter code 2F if the ALE Member used the section 4980H Form W-2 safe harbor to determine affordability for purposes of section 4980H(b) for this employee for the year. If an ALE Member uses this safe harbor for an employee, it must be used for all months of the calendar year for which the employee is offered health coverage.
 - Using the W-2 safe harbor will require the employer to look at the **lowest paid employee** in each contribution category, to determine whether coverage is affordable
 - If coverage is affordable for the lowest paid employee, it will be affordable for all others

Employer Reporting – Form 1095-C

Safe Harbor and Other Relief (Line 16) – The Codes

- **2G.** Section 4980H affordability federal poverty line safe harbor. Enter code 2G if the ALE Member used the section 4980H federal poverty line safe harbor to determine affordability for purposes of section 4980H(b) for this employee for any month(s).
 - Using the Federal Poverty Level “safe harbor” method for calculating whether coverage is affordable:
 - 2018 Single FPL = \$12,140 (annual)
 - 9.86% of that = \$1,197.00 (annual)
 - Employee’s premium contribution for self-only coverage cannot exceed \$99.75 per month
 - 2019 FPL safe harbor calculation is based on 2018 Single FPL

Employer Reporting - Form 1095-C

Safe Harbor and Other Relief (Line 16) - The Codes

- **2H.** Section 4980H affordability rate of pay safe harbor. Enter code 2H if the ALE Member used the section 4980H rate of pay safe harbor to determine affordability for purposes of section 4980H(b) for this employee for any month(s).
 - Using the Rate of Pay safe harbor will require the employer to look at the **lowest paid employee** in each contribution category, to determine whether coverage is affordable
 - If coverage is affordable for the lowest paid employee, it will be affordable for all others
 - If using Rate of Pay safe harbor, calculate based on 130 hours per month (regardless of how many hours the employee actually works)

Employer Reporting – Form 1095-C

Safe Harbor and Other Relief (Line 16) – The Codes

- Codes 2F/2H: Affordability safe harbor for 2019 is 9.86%
 - *Prior years: 9.56% in 2018/9.69% in 2017/9.66% in 2016).*
 - *Will decrease to 9.78% for 2020.*
 - Note: Codes 2F, 2G, and 2H should not be used for any month that the employer did not offer **minimum essential coverage** to at least 95% of its full-time employees and their dependents (that is, any month for which the employer checked “No” on Form 1094-C, Part III, column (a).
 - Note: “minimum essential” coverage, not necessarily “affordable”.
- **2I.** Reserved (not used in 2019).

Employer Reporting – Form 1095-C

Part III:

- For self-insured large employers
- Reporting includes:
 - Who was enrolled and when (by month)
 - Identifying info (name and SSN or TIN) for each covered individual – employee and dependents

Information in Part III will be provided to employees and the IRS via Forms 1095-B, completed by MMEHT

Health Trust participating employers can request a spreadsheet of 1095-B information, via email to awright@memun.org.

What About Buyouts??

- IRS Notice 2015-87 (www.irs.gov/pub/irs-drop/n-15-87.pdf)
- Outlines two types of opt-out payments
 - Unconditional
 - Conditional
- Type of opt-out arrangement may affect how employer calculates affordability

Unconditional

- Unconditional opt-out
 - Payment made if employee declines (opts out of) employer-sponsored health plan, with no other requirements
 - IRS views such an offer as increasing the cost to employees who enroll in the employer's plan, since an employee cannot receive the opt-out payment if he/she enrolls in the employer's health plan
 - Employer will need to add opt-out payment amount to employee's share of premium costs when determining affordability

Unconditional Opt-Out

- Example:
 - Employee premium cost for self-only coverage for lowest cost plan offered by employer = \$50/month = Affordable
 - Effective January 1, 2019, employer offers unconditional opt-out payment of \$250/month
 - Employee may opt out of employer-sponsored plan, even if not enrolled in other group health coverage, and receive \$250/month payment
 - Employer must report employee's monthly premium cost as \$300/month ($\$50 + \250) = Unaffordable
 - IRS views the employee's inability to receive the \$250 if enrolled in coverage as an added cost to employee
 - Under this scenario, employee may become eligible for subsidy through Marketplace
 - Employer may become subject to penalty

Conditional

- Conditional opt-out
 - Payment made if employee declines (opts out of) employer-sponsored health plan, and satisfies “meaningful requirement related to the provision of health care to employees”
 - No effect on calculation of “affordability”
 - Employer does not need to add conditional opt-out payment amount to employee’s share of premium costs when determining affordability

Conditional

- Conditional opt-out
 - Employee must attest that he and all of his tax dependents will have other minimum essential health coverage for the period of coverage to which the opt-out payment applies
 - Other coverage may not be individual coverage – either through individual insurance market or Marketplace or state Exchange
 - “Reasonable evidence” of other coverage must be provided at least every plan year
- Payment may not be made if the employer knows (or has reason to know) that the employee and any of his tax dependents will not have alternative coverage

Employer Reporting - Form 1094-C

- Form 1094-C => Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns
- Form 1094-C must be provided:
 - To the IRS, along with copies of all Forms 1095-C provided to full-time employees
 - On or before **February 28, 2020** (if filing paper copies)/ **March 31, 2020** (if filing electronically)
 - Employers filing 250+ returns **must** file electronically; those with fewer than 250 returns **may** file electronically
 - Employers may file for a 30-day extension via IRS Form 8809, Application for Extension of Time to File Information Returns
 - Must file for extension **before** the due date of the forms
 - Final form issued December 2019
 - Form: <https://www.irs.gov/pub/irs-pdf/f1094c.pdf>
 - Instructions: <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>

Form 1094-C (Transmittal to IRS) - p.1

120118

Form **1094-C**

Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

CORRECTED

OMB No. 1545-2251

2019

Department of the Treasury
Internal Revenue Service

▶ Go to www.irs.gov/Form1094C for instructions and the latest information.

Part I Applicable Large Employer Member (ALE Member)

1 Name of ALE Member (Employer)		2 Employer identification number (EIN)	
3 Street address (including room or suite no.)			
4 City or town		5 State or province	6 Country and ZIP or foreign postal code
7 Name of person to contact		8 Contact telephone number	
9 Name of Designated Government Entity (only if applicable)		10 Employer identification number (EIN)	
11 Street address (including room or suite no.)			
12 City or town		13 State or province	14 Country and ZIP or foreign postal code
15 Name of person to contact		16 Contact telephone number	
17 Reserved			<input type="checkbox"/>

For Official Use Only



18 Total number of Forms 1095-C submitted with this transmittal ▶

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions

Part II ALE Member Information

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member ▶

21 Is ALE Member a member of an Aggregated ALE Group? Yes No

If "No," do not complete Part IV.

22 Certifications of Eligibility (select all that apply):

A. Qualifying Offer Method B. Reserved C. Reserved D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature _____ Title _____ Date _____

Employer Reporting - Form 1094-C

Part I, Lines 1 - 18:

- Reporting includes:
 - Name, address, contact name and telephone number, and EIN for Applicable Large Employer (ALE)
 - Do not truncate EIN; enter the 9 digit EIN including the dash
 - Information regarding Designated Governmental Entity filing on behalf of the ALE (only if applicable)
 - Total number of Forms 1095-C submitted with transmittal

Employer Reporting - Form 1094-C

Part I, Line 19:

- Question: Is this the Authoritative Transmittal for this ALE Member?
 - If “yes”, complete remainder of form (lines 19 - 22, part III, and part IV), and sign
 - If “no”, sign, then leave the rest of the form (lines 19 - 22, part III, and part IV) blank
- There must be only one Authoritative Transmittal filed for each ALE Member. If this is the only Form 1094-C being filed for the ALE Member, this Form 1094-C must report aggregate employer-level data for the ALE Member and be identified on line 19 as the Authoritative Transmittal. If multiple Forms 1094-C are being filed for an ALE Member so that Forms 1095-C for all full-time employees of the ALE Member are not attached to a single Form 1094-C transmittal (because Forms 1095-C for some full-time employees of the ALE Member are being transmitted separately), one (and only one) of the Forms 1094-C must report aggregate employer-level data for the ALE Member and be identified on line 19 as the Authoritative Transmittal.

Employer Reporting - Form 1094-C

Part II, Lines 20 - 22:

- Complete only if Authoritative Transmittal
- Reporting includes:
 - Total number of Forms 1095-C filed by and/or on behalf of ALE Member
 - Part of Aggregated ALE Group?
 - **Aggregated ALE Group.** An Aggregated ALE Group refers to a group of ALE Members treated as a single employer under section 414(b), 414(c), 414(m), or 414(o). An ALE Member is a member of an Aggregated ALE Group for a month if it is treated as a single employer with the other members of the group on any day of the calendar month. If an ALE is made up of only one person or entity, that one ALE Member is not a part of an Aggregated ALE Group. Government entities and churches or conventions or associations of churches may apply a reasonable, good faith interpretation of the aggregation rules under section 414 in determining their status as an ALE or member of an Aggregated ALE Group.
 - If “no” - do not complete Part III column (d) or Part IV of Form 1094-C

Employer Reporting - Form 1094-C

Part II, Line 22:

Certifications of Eligibility (select all that apply)

- A. Qualifying Offer Method
 - Qualifying Offer = minimum value, affordable, minimum essential coverage to offered to employee + minimum essential coverage offered to spouse and dependents
 - Employer made Qualifying Offer to one or more of its full-time employees for all months during the year in which the employee was a full-time employee for whom an employer shared responsibility payment could apply, and reports this on Form 1095-C, Line 14, Code 1A for any employee receiving the Qualifying Offer

Employer Reporting - Form 1094-C

Part II, Line 22:

- A. Qualifying Offer Method (continued)
 - Remember: Do not complete Line 15 (actual contribution amount) on Form 1095-C if using this method
 - Employer may choose whether or not to enter a code on line 16 for any month for which code 1A (Qualifying Offer) is entered on line 14
 - Qualifying Offer is, by definition, treated as an offer that falls within the affordability safe harbor even if no code is entered on line 16
 - Employer is not required to use this method, even if eligible to do so
 - Employer may choose to report Offer Code (1B, 1C, 1D, or 1E, whichever is applicable) and Contribution Amount instead

Employer Reporting - Form 1094-C

Part II, Line 22:

Certifications of Eligibility (select all that apply)

- B. Reserved (not used in 2019)
- C. Reserved (not used in 2019)

Employer Reporting - Form 1094-C

Part II, Line 22:

Certifications of Eligibility (select all that apply)

- D. 98% Offer Method
 - Employer offered:
 - minimum value coverage
 - that met the ACA's definition of affordable (using one of the affordability safe harbors)
 - to at least 98% of employees for whom it is filing a 1095-C,
and
 - minimum essential coverage to their dependents

Employer Reporting – Form 1094-C

Part II, Line 22:

- D. 98% Offer Method (continued)
 - If employer checks this box, employer does not need to complete “Full-Time Employee Count” in column b in Part III of Form 1094-C
 - This method takes into account all months during which individuals were employees and **not** in Limited Non-Assessment (Waiting) Period
 - Employer must still file Forms 1095-C for all full-time employees who were full-time employees for one or months during the reporting year
 - Employer should also confirm for any employee that does not receive a 1095-C, that the employee was not a full-time employee for any month of the calendar year

Form 1094-C (Transmittal to IRS) – p.2

120218

Form 1094-C (2019)

Page 2

Part III ALE Member Information – Monthly

	(a) Minimum Essential Coverage Offer Indicator		(b) Section 4980H Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Reserved
	Yes	No				
23 All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24 Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25 Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26 Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
27 Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28 May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
29 June	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
30 July	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
31 Aug	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
32 Sept	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
33 Oct	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
34 Nov	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
35 Dec	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

Employer Reporting – Form 1094-C

Part III:

- Reporting includes:
 - Column (a) – Minimum Essential Coverage (MEC) Offer
 - Did employer offer MEC to at least 95% of full-time employees and their dependents?
- If the ALE Member offered minimum essential coverage to at least 95% of its full-time employees and their dependents for the entire calendar year, enter “X” in the “Yes” checkbox on line 23 for “All 12 Months” or for each of the 12 calendar months.
- If the ALE Member offered minimum essential coverage to at least 95% of its full-time employees and their dependents only for certain calendar months, enter “X” in the “Yes” checkbox for each applicable month.
- For the months, if any, for which the ALE Member did not offer minimum essential coverage to at least 95% of its full-time employees and their dependents, enter “X” in the “No” checkbox for each applicable month.
- If the ALE Member did not offer minimum essential coverage to at least 95% of its full-time employees and their dependents for any of the 12 months, enter “X” in the “No” checkbox for “All 12 Months” for each of the 12 calendar months.

Employer Reporting – Form 1094-C

Part III:

- Reporting includes:
 - Column (a) – Minimum Essential Coverage Offer
 - Did employer offer MEC to at least 95% of full-time employees and their dependents?
- For purposes of column (a), if the ALE Member offered minimum essential coverage to all but five of its full-time employees and their dependents, and five is greater than 5% of the number of full-time employees of the ALE Member, the ALE Member may report in column (a) as if it offered health coverage to at least 95% of its full-time employees and their dependents (even if it offered health coverage to less than 95% of its full-time employees and their dependents, for example to 75 of its 80 full-time employees and their dependents).
- For purposes of column (a), an employee in a Limited Non-Assessment Period (e.g. waiting period) is not counted in determining whether minimum essential coverage was offered to at least 95% of an ALE Member's full-time employees and their dependents.

Employer Reporting - Form 1094-C

Part III:

- Reporting includes:
 - Column (b) - Full-Time Employee Count
 - Remember: Full-time = 30+ hours/week or 130+ hours/month, not including employees in waiting period
- Enter the number of full-time employees for each month, but do not count any employee in a Limited Non-Assessment Period. If the number of full-time employees (excluding employees in a Limited Non-Assessment Period) for a month is zero, enter -0-.
- An employee should be counted as a full-time employee for a month if the employee satisfied the definition of a full-time employee under the monthly measurement method or the look-back measurement method (as applicable) on any day of the month (e.g., even if the employee terminated during the month). Remember: a “full-time employee” = 130 hours per month.
- **Note.** If the ALE Member certified that it was eligible for the 98% Offer Method by selecting box D, on line 22, it is not required to complete column (b).

Employer Reporting - Form 1094-C

Part III:

- Reporting includes:
 - Column (c) - Total Employee Count
- Enter the total number of all of the ALE Member's employees, including full-time employees and non-full-time employees, and employees in a Limited Non-Assessment Period, for each calendar month. An ALE Member must choose to use one of the following days of the month to determine the number of employees per month and must use that day for all months of the year: (1) the first day of each month; (2) the last day of each month; (3) the 12th day of each month; (4) the first day of the first payroll period that starts during each month; or (5) the last day of the first payroll period that starts during each month (provided that for each month that last day falls within the calendar month in which the payroll period starts). If the total number of employees was the same for every month of the entire calendar year, enter that number in line 23, column (c) "All 12 Months" or in the boxes for each month of the calendar year. If the number of employees for any month is zero, enter -0- .

Employer Reporting - Form 1094-C

Part III:

- Reporting includes:
 - Column (d) - Aggregated Group Indicator
- An ALE Member must complete this column if it checked “Yes” on line 21, indicating that, during any month of the calendar year, it was a member of an Aggregated ALE Group. If the ALE Member was a member of an Aggregated ALE Group during each month of the calendar year, enter “X” in the “All 12 Months” box or in the boxes for each of the 12 calendar months. If the ALE Member was not a member of an Aggregated ALE Group for all 12 months but was a member of an Aggregated ALE Group for one or more month(s), enter “X” in each month for which it was a member of an Aggregated ALE Group. If an ALE Member enters “X” in one or more months in this column, it must also complete Part IV.
 - Column (e) - Ignore 😊

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Page 3

Part IV Other ALE Members of Aggregated ALE Group

Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year).

Name	EIN	Name	EIN
36		51	
37		52	
38		53	
39		54	
40		55	
41		56	
42		57	
43		58	
44		59	
45		60	
46		61	
47		62	
48		63	
49		64	
50		65	

Employer Reporting - Form 1094-C

Part IV:

- Reporting includes:
 - Names and EINs of Other ALE members of the Aggregated ALE Group
 - Members at any time during the calendar year
 - Aggregated ALE Group - Affiliated employers with common ownership or that are part of a controlled group, treated as a single employer under Section 414(b), 414(c), 414(m), or 414(o)
 - Complete this section only if checked "Yes" on line 21.
 - Consult with your attorney with questions on Aggregated ALE Group Status

Employer Reporting

- Here's a link to the IRS website, where you can find information on filing information returns
- For Federal, State, and Local Governments:
<https://www.irs.gov/government-entities/federal-state-local-governments>
 - Click on the link for Affordable Care Act (ACA) Information for Government Entities, or go directly to:
- Affordable Care Act Information Returns (AIR) Program:
<https://www.irs.gov/e-file-providers/air/affordable-care-act-information-return-air-program>
- This website includes information on how to file electronically
- You can also submit questions regarding electronic filing of forms, by using the links at the bottom of the page
 - There's a link to the AIR Mailbox, under Contact and News Information: Contact Us

The IRS Estimates

- How long it *should* take to complete your 1095 forms for 2019:

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Form 1094-C	4 hrs.
Form 1095-C	12 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments from [IRS.gov/FormComments](https://www.irs.gov/FormComments). Or you can write to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Don't send the form to this office.

What Happens If You Don't File?

- If a large employer does not file the required forms, there is a significant penalty!
 - **\$270 for each return that is not filed but should have been, to a maximum of \$3,339,000 per calendar year ***

** Maximum \$1,113,000 if the company's gross receipts are less than \$5 million*

PLUS

- **\$270 for each payee statement that is not provided but should have been, to a maximum of \$3,339,000 per calendar year ***
 - * Maximum \$1,113,000 if the company's gross receipts are less than \$5 million*
- Penalties may be increased if “intentional disregard” of requirement to furnish payee statement
 - If errors – can file corrected forms
 - Penalties may be waived if failure is due to “reasonable cause” and not “willful neglect”
 - IRS Notice 2019-63 extended “good faith effort” relief for one more year

And Here's Another Reason to Care

- There's this little thing called Employer Shared Responsibility under the ACA.....
- Some people call it the Employer Mandate
- Also sometimes referred to as "Play or Pay"

Who Must Play or Pay?

- Applicable Large Employers (ALEs)
 - Defined in the ACA as having at least 50 full-time plus full-time equivalent employees
 - Full-time equivalents (FTEs) are counted when determining if group is an Applicable Large Employer, but they do not all have to be offered coverage
- No requirement for small employers to offer coverage

Employer Shared Responsibility

- Not a **mandate**, but
- Imposes a **penalty** on large employers that either:
 - **Do not offer coverage** to substantially all eligible full-time employees; or
 - **Do offer coverage**, but that coverage does not meet key criteria
 - Minimum value
 - Affordability
- Under the Employer Shared Responsibility provision of the ACA, in order to avoid a penalty, Applicable Large Employers (ALEs) must offer **minimum value, affordable coverage to substantially all full-time employees.**

Definition of Terms

- **Minimum value** = Actuarial value of at least 60% (bronze)

A health plan meets the minimum value standard if it pays at least 60% of the total cost of medical services for a standard population and offers substantial coverage of hospital and doctor services. In other words, in most cases a plan that meets minimum value will cover 60% of covered medical costs. You'd pay 40%.

- **Substantially all** = 95%
- **Full-time employees** = work at least 30 hours per week/
130 hours per month
- **Affordable** = Employee's premium contribution for self-only coverage for the lowest cost, minimum value plan offered by the employer, in which the employee is eligible to enroll, may not exceed a certain percentage (9.86% for 2019) of household income
 - Percentage is indexed; may change every year
 - Three Safe Harbors for determining Affordability

What Is the Penalty, and Who Will Have To Pay It? (“Sledgehammer”)

- An employer that **does not offer** Minimum Essential, Minimum Value Coverage to substantially all (95%) of their full-time employees will be responsible for paying a penalty **if**:
 - at least one full-time employee obtains coverage through the Marketplace, **and**
 - that employee receives a subsidy to help pay for coverage
- Penalty for 2019 will be equal to \$2,500 annually for each full-time employee employed by the employer, not counting the first 30 employees
 - Penalty amount is prorated based on the number of months during which one or more employees receives a subsidy
- Penalty amount will increase each year

What Is the Penalty, and Who Will Have To Pay It? (“Tackhammer”)

- An employer that **does offer** Minimum Essential, Minimum Value Coverage to substantially all (95%) of their full-time employees will be responsible for paying a penalty **if**:
 - at least one full-time employee obtains coverage through the Marketplace, **and**
 - that employee receives a subsidy to help pay for coverage
- Penalty for 2019 will be equal to **the lesser of**:
 - \$3,750 annually for each full-time employee that enrolls in coverage, and receives a subsidy, through the Marketplace, or
 - \$2,500 annually for each full-time employee employed by the employer, not counting the first 30 employees
 - Penalty amount is prorated based on the number of months during which one or more employees receives a subsidy
- Penalty amount will increase each year

How Can A Large Employer Avoid the Penalty?

- An Applicable Large Employer may avoid the Sledgehammer penalty by doing **all** of the following:
 - Offer **Minimum Essential Coverage** to **substantially all** (95%) **full-time** employees and their dependents (children to age 26)
 - Ensure that the plan provides **Minimum Value**
 - Ensure that the employee's premium contribution for **self-only** coverage for the **lowest-cost**, Minimum Value plan in which the employee is eligible to enroll is **Affordable**
- May still be subject to the Tackhammer penalty
 - Remember: If no full-time employees receive a subsidy through the Marketplace, the employer is not subject to a penalty.

Who Is Eligible for a Subsidy Through the Marketplace?

- Employee is eligible for subsidy if:
 - Between 100% and 400% of Federal Poverty Level;
(Note: Medicaid eligibility in Maine = <138% of federal poverty level)
 - Not eligible for coverage through a government-sponsored health insurance programs such as Medicaid or CHIP;
 - Not eligible for employer-sponsored coverage; or, eligible for employer-sponsored coverage but such coverage is considered to be **unaffordable** or does not provide minimum value

If married, must file taxes jointly to qualify.

Who Is Not Eligible for a Subsidy Through the Marketplace?

- If an employee is offered employer-sponsored coverage that meets the definitions of **Minimum Essential Coverage, Minimum Value, and Affordable**, that employee and his dependents will not be eligible to receive a subsidy through the Exchange
 - *The “family glitch” is the ACA rule that bases eligibility for a family’s premium subsidies on whether available employer-sponsored insurance is affordable for the employee only, even if it’s not actually affordable for the whole family*
 - *While large employers are required to offer health coverage to employees’ children, there is no requirement that the employer pay for that coverage, because the cost of the dependents’ coverage is not factored into the “affordable” calculation*

How Will the Penalty Be Assessed?

According to the IRS:

- Employer will not make a payment with a return
 - IRS will determine amount and notify employer
 - Employer will have opportunity to respond before assessment
 - IRS will send a notice and demand after assessment
-
- From: *Employer Shared Responsibility Provisions – What Government Employers Need to Know*; IRS Presentation, July 24, 2014

How Will You Know If the IRS Thinks You Owe a Penalty?

- You will receive a Letter 226J from the IRS (<https://www.irs.gov/pub/notices/ltr226j.pdf>)
- The Letter 226J includes the IRS “preliminary calculation” of the Employer Shared Responsibility Payment (penalty) that you owe
- In the Letter 226J, the IRS will detail the proposed penalty amount and why it believes the penalty is appropriate

What Do You Do If You Get a Letter 226J?

DON'T PANIC!

Sometimes the IRS can be wrong

Or sometimes you can. Check your forms carefully.

- Was all the information that you provided on your 1095-C forms correct?
 - If you made a mistake, there may still be time to correct it
- Did you leave any spaces blank that shouldn't have been?
 - Sometimes a blank space is read as a "No", even if that's not what it meant

How to Respond to a Letter 226J

- Quickly!
 - Within 30 days or less
- With IRS Form 14764 (<https://www.irs.gov/pub/irs-pdf/f14764.pdf>)
 - Provides a template for employer to either:
 - Agree to pay the proposed penalty; or
 - Disagree with all or part of the proposed penalty
 - If you disagree, include a signed statement outlining why you disagree. Include documentation if available. Explain what changes (if any) should be made to the information reported on the Forms 1095-C and/or 1094-C.
- And IRS Form 14765 (<https://www.irs.gov/pub/irs-pdf/f14765.pdf>)
 - Provides an explanation from the IRS, re: why they are assessing a penalty
 - Lists each employee who triggered the ACA penalty, and for which month(s)

One More Time

- **DO NOT ignore the Letter 226J!**
- You can appeal the proposed penalty, but you only have 30 days to respond (sometimes less)
- If you do not respond, the IRS will assess the full amount of the proposed payment in a demand letter
- If you do respond, but you still don't agree with the IRS's revised proposed payment, you can then make a written request for an appeal

The Future of the ACA

First, let's look at the past.....

2017:

- January 2017 - President Trump signs an Executive Order that:
 - Provides certain agencies and departments with the discretion to waive, defer, grant exemptions from, or delay implementation of the ACA's taxes, penalties, etc.
 - Did not actually change or repeal the ACA - or any portion thereof
- Throughout 2017 - Congress tries (unsuccessfully) to repeal the ACA
- December 22, 2017 - The Tax Cuts and Jobs Act of 2017 ("The Tax Act") is signed into law
 - Reduces the penalties under the "individual mandate" to \$0, eff. 1/1/2019
 - Does not make any changes to employer reporting requirements (1095-Cs) or the employer shared responsibility provision of the ACA

Then, The Lawsuit

2018:

- 2018 - Texas v. United States et al (aka Texas v. Azar)
 - Case brought in U.S. District Court in Texas
 - Challenges the constitutionality of the individual mandate following the Tax Act's reduction of the penalty to \$0 effective 1/1/2019
 - The plaintiffs' claim: No penalty = no individual mandate
 - If no individual mandate, the entire ACA should be struck down, because the mandate was "essential" to the law (i.e., the mandate was "inseverable")
- December 14, 2018 - US District Court Judge Reed O'Connor rules:
 - Since Congress eliminated the penalty for not having insurance (i.e., for not complying with the individual mandate), the mandate is no longer permissible under Congress' taxing power

A Little Background

- What does Congress' taxing power have to do with the ACA?
 - In 2012, the US Supreme Court had ruled (in *National Federation of Independent Businesses v. Sibelius*) that the individual penalty was a "tax", saying that Congress could not force (i.e., mandate) people to purchase health insurance, but it could tax those who fail to do so
- So, according to the Texas Court:
 - Under *Sibelius*, Congress can tax people for not having insurance, but they can't mandate them to buy it
 - Once the penalty is reduced to \$0, there is no tax associated with the mandate
 - If there's no tax, the mandate is no longer permissible
 - If the mandate is no longer permissible, it is unconstitutional
 - Furthermore, the individual mandate is "essential" to the ACA, and thus not severable from it
 - Therefore, the entire ACA is now invalid

The Appeal

- December 30, 2018 – Two weeks after ruling that the individual mandate (and thus, the entire ACA) was unconstitutional, Judge O’Connor ruled that declaring the ACA immediately void would cause great uncertainty for patients, providers, insurers, and federal and state governments
 - A “stay” was placed on the decision until appellate review options were exhausted
 - All provisions of the ACA remained in effect
 - Individual mandate (even though the penalty for not having coverage was reduced to \$0)
 - Employer shared responsibility
 - Employer reporting
- An appeal was then filed with the Fifth Circuit Court of Appeals

And Now Another Decision!

- December 18, 2019 – The Fifth Circuit Court of Appeals rules that:
 - With regard to the Individual Mandate itself - The Individual Mandate as constructed after the Tax Cuts and Jobs Act of 2017 is unconstitutional (agreeing with the Texas Court)
 - With regard to the Severability of the Individual Mandate from the rest of the ACA - The Fifth Circuit remanded this back to the District Court, and told them they need to:
 - Re-examine (with a “finer-toothed comb”) the severability question, with a focus on the intent of the **2017 Congress** (which passed the Tax Cuts and Jobs Act amending the ACA) as opposed to the 2010 Congress (which passed the original ACA)
 - Describe more precisely which provisions of the ACA (as amended by the Tax Cuts and Jobs Act of 2017) cannot be severed from the Individual Mandate.
- Severability: If Congress had known a piece of a larger law would be struck down as unconstitutional, would it have wanted the rest of the statute to stand?

What Does This Mean For You?

- Practically speaking – not much for now.
 - There will almost certainly be an appeal to the U.S. Supreme Court
 - The ACA is still the law of the land
 - There is no penalty for individuals without health insurance coverage
 - Large employers still have to provide affordable coverage to their full-time employees, or face the possibility of a penalty

And – most important of all -

You still have to do your 1095-C
reporting!!!

*Please note that the Maine Municipal Association
and the Maine Municipal Employees Health Trust
are sharing this information to assist you with
your compliance planning.*

*We recommend that you contact
your legal counsel
with specific questions relating to this law.*

GENERAL QUESTIONS?

*Contact: Anne M. Wright
Director, Health Trust Services
awright@memun.org*