

Insights, News & Events

5 NEW ACA REPORTING AND PENALTY RULES EMPLOYERS WILL BE HAPPY ABOUT

Insights
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Two new federal laws bring good news to employers subject to reporting and other requirements under the Patient Protection and Affordable Care Act (ACA). President Biden approved laws in December that not only ease the burdens of furnishing copies of IRS Forms 1095-B and 1095-C to applicable individuals but also give applicable large employers (ALEs) new protections related to employer shared responsibility (ESR) penalty assessments. We'll cover five key changes under the new laws and seven steps you should consider taking next.

Quick Background on the ACA's Employer Mandate + Select Reporting Requirements

The ACA requires ALEs to either offer health coverage that complies with the ACA's ESR provisions or potentially pay a penalty to the Internal Revenue Service (IRS). The ACA also requires many employers (including non-ALEs) and health insurance providers to annually report health coverage information to the IRS and furnish copies of those tax forms to certain individuals.

Here's a snapshot of the furnishing requirements, who must comply, and the relevant tax forms:

- **IRS Form 1095-C.** ALEs generally must provide, by a certain deadline each year, copies of Form 1095-C to each employee who was a "full-time employee" of the ALE for ACA purposes for any month of the applicable calendar year. *But read on for how this requirement recently changed.*

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- **IRS Form 1095-B.** Smaller employers (non-ALEs) that sponsor self-insured group health plans, as well as health insurance providers, generally must provide, by a certain deadline each year, copies of Form 1095-B to covered individuals (and ALEs may opt to use Form 1095-B to report coverage for certain non-employees). However, the IRS has permitted the 1095-B furnishing requirement to be met in an alternative manner in past reporting years. *Read on for why utilizing that alternative method is now safer than ever.*

What's the Latest?

President Biden signed two new bills into law on December 23 – including the “Paperwork Burden Reduction Act” (PBRA, [H.R. 3797](#)) and the “Employer Reporting Improvement Act” (ERIA, [H.R. 3801](#)). Together, these laws help employers and health insurance providers by easing at least some of the ACA reporting burdens and giving ALEs new protections related to ESR penalty assessments. We’ll explain all the new changes in more detail below.

5 New ACA Reporting and ALE Penalty Rules That Employers Will Be Happy About

1. You may opt to distribute Forms 1095-B and 1095-C only upon request.

Employers and health insurance providers are no longer required to distribute Forms 1095-B and 1095-C to all covered individuals, so long as certain conditions are met. Beginning with your 2024 returns, the PBRA permits you to meet the ACA’s furnishing requirement if you:

- **provide “clear, conspicuous, and accessible notice”** (at such time and manner as the IRS may require – more on that below) that any person who would otherwise be entitled to receive a copy of Form 1095-B or Form 1095-C may request a copy of the applicable form; and
- **provide a copy of such form** to any individual who requests it **within 30 days** of the request or, if later, by **January 31** of the year following the reporting year.

This marks the first time that filers of Form 1095-C may utilize this alternative manner of furnishing statements to individuals. While the IRS has permitted use of this alternative manner for furnishing Form 1095-B (where the



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entity posts on its website that the information may be sent out upon request), the PBRA now provides statutory authority for this practice and extends the same flexibility to entities required to furnish Form 1095-C.

Alternative manner notice and content requirements: As mentioned above, the “alternative manner” notice must meet certain conditions set by the IRS. While the IRS has not yet addressed these conditions following the enactment of the PBRA, the [2024 Instructions for Form 1095-B](#) might be helpful guidance here, as they describe the alternative manner conditions the agency has required since before the PBRA’s enactment (*see page 5 of the Instructions for the full details*). Note, for example, that the 2024 Instructions for Form 1095-B require anyone using the alternative manner to post the required notice on their website by **March 3, 2025**, and to keep it posted there until October 15, 2025.

2. You may distribute Forms 1095-B and 1095-C electronically.

For Forms 1095-B and 1095-C due in 2025 or later, the ERIA permits you to distribute forms electronically after obtaining the individual’s consent. Note, however, that individuals may revoke their consent, in writing, at any time.

The ERIA codified existing [federal regulations](#) that permit electronic delivery of these forms upon affirmative consent. Under those rules, consent may be made electronically “in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished.” As for withdrawals of consent, the regulations state that the furnisher “may provide that a withdrawal of consent takes effect either on the date the furnisher receives it or on another date no more than 60 days later,” and that the furnisher also “may provide that a recipient’s request for a paper statement will be treated as a withdrawal of the recipient’s consent.”

3. You will have more flexibility when it comes to TIN reporting.

For Forms 1095-B or 1095-C due in 2025 or later, you may use an individual’s full name and date of birth when the individual’s tax identification number (TIN) is not available.

4. You will have a longer period of time to respond to IRS Letter 226-J.

The IRS uses Letter 226-J to provide employers notice of a proposed ESR payment assessment. Under the ERIA, you now have **90 days** to respond to the proposed assessment letter (versus the 30 days previously afforded, unless an extension was granted).

5. A statute of limitations now applies to IRS penalty assessments – on a prospective basis.

For Forms 1095-C that are due in 2025 or future years, the ERIA requires the IRS to assess ESR payments within **six years** of the later of:

- the employer's due date for filing a Form 1095-C with the IRS; or
- the date such return was actually filed.

This is a huge win for employers, because the IRS previously took the position that no statute of limitations applied to these penalty assessments. Note, though, that this change only applies prospectively, so employers may still receive penalty assessments beyond the six-year statute of limitations for coverage failures tied to returns due in 2024 or prior years.

7 Next Steps for ALEs + Employers and Health Insurance Providers That File Form 1095-B

Based on these recent changes, you should consider taking the following steps:

- 1. Decide if you will use the alternative manner of furnishing statements.** Many employers will be inclined to use the alternative manner to avoid the time and resources it takes to distribute Forms 1095-B or 1095-C to all applicable individuals. Particularly, employers that distribute a high volume of paper forms may see a cost reduction in form preparation, and a potential increase in productivity with the elimination of time set aside for form prep. Just remember that using the alternative manner means that you must prepare a notice that meets certain IRS conditions, or else you will risk liability for non-compliance. Work with your vendor (if applicable) and counsel if you are unsure about this decision.
- 2. Prepare and post the required notice.** If you choose to use the alternative manner of furnishing Forms 1095-B or 1095-C, work with counsel to ensure you post the

required notice and that it meets the content, form, and timing conditions set by the IRS (and look out for any future IRS guidance on these conditions). If you outsource preparation of the forms, also work with your vendor to understand the new process for form requests and ensure turnaround times will be met. For example, will individuals make the request to the vendor directly, or will the employer need to liaise between the vendor and individual?

3. **Timely provide requested forms.** If you are using the alternative manner of furnishing forms and an individual requests a copy of their Form 1095-B or Form 1095-C, make sure you (or your vendor) distribute a copy to that individual within 30 days (or by January 31, if later).
4. **Draft a consent form for electronic distribution.** If you wish to deliver Forms 1095-B or 1095-C electronically, make you sure you first obtain the individual's consent. If you have not done so already, you will need to develop (or work with your vendor to develop) a system for obtaining consent from every individual who must receive a form (which would include only those individuals who request to receive copies – if you utilize the alternative manner of furnishing statements). If an individual does not provide the required consent, or provides consent but later revokes it, you may not deliver their forms electronically.
5. **Train your team.** For employers with ACA compliance obligations, good compliance posture is key. Be sure to keep team members up to speed and trained on these developments and any new processes, including any applicable insurance carrier updates, and be prepared to answer employee questions.
6. **Know your new protections (ALEs).** If you are an ALE, be aware of the changes under the ERIA that give you more time (90 days) to respond to IRS Letter 226-J and require the IRS to assess ESR penalty payments within a six-year statute of limitations.
7. **Understand your state law compliance obligations.** Note that these laws do not change any requirements for states with individual health insurance mandates where affirmative and/or paper distribution may still be required – this includes California, Massachusetts, New Jersey, Rhode Island, and Washington D.C.

Conclusion

If you have any questions about these latest developments or other ACA reporting issues, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Employee Benefits and Tax Practice Group](#). Make sure to sign up for [Fisher Phillips Insights](#) to stay up to speed on the latest developments.