



EMPLOYERS

Need to Know About Employer Shared Responsibility

By Tom Sigmund

Employer Shared Responsibility – What Does It Mean for You?

The last thing on anyone's mind while basking in the splendor of the July summer sun is tax season. However, there are a few changes this upcoming filing year of which employers and business owners should be aware. Under the Affordable Care Act, employers of a certain size are required file an annual return in 2016 reporting whether and what type of health insurance is offered to employees. This reporting requirement is effective for the 2015 filing year, meaning that the filings will be due in early 2016. Here are the Top 10 things employers need to know about Employer Shared Responsibility in order to avoid major issues during the next filing season.

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What is Employer Shared Responsibility?

A payment assessed against an employer that is an Applicable Large Employer (ALE). An ALE is defined as an employer with 100 or more full-time employees in 2015; 50 or more starting in 2016. The penalty may be assessed by the IRS for one of two reasons:

- + Employer offers minimal essential coverage to fewer than **70%** (95% for every year hereafter) of its full-time and full-time equivalent employees and their dependents AND at least one full-time employee was enrolled in coverage through the Health Insurance Marketplace and receives a premium tax credit; OR
- + Employer offers minimal essential coverage to at least **70%** (95% for every year hereafter) of its full-time and full-time equivalent employees and their dependents, but at least one full-time employee received a premium tax credit (either because coverage offered was not affordable, employer did not provide the minimum value, or the full-time employee was not offered coverage)

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What Type of Coverage Should I Be Offering to Avoid a Shared Payment?

If you as an employer offer health coverage, you must provide affordable and minimum value coverage

- + **Affordable Coverage:** The lowest cost self-only health plan is 9.5% or less of a full-time employee's household income. Because it is likely the employee's household income is unknown, you can use one or more of the [affordability safe harbors](#) to determine the income.
- + **Minimum Value Coverage:** A plan that covers at least 60% of the total allowed cost of benefits that are expected to be incurred under the plan. The Department of Health and Human Services and the IRS produced a [calculator](#) that can help determine the minimum value coverage.

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Do I Have to File?

You *must* file if you qualify as a:

- + **ALE:** Employer who has, on average, 50 or more full-time or full-time equivalent employees during the prior calendar year (this is the rule for the filing requirements even though the penalty in 2015 only applies to employers with 100 or more full-time employees)
- + **Aggregated ALE:** Companies with a common owner or that are otherwise related under Internal Revenue Code §414 are generally combined and treated as a single ALE; the combined number of full-time and full-time equivalent employees must meet the definition of ALE for the company to become subject to the employer shared responsibility provisions, even if it would not qualify separately
- + **Government Entity**

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You *do not* have to file a return under Employer Shared Responsibility if you are an:

- + Employer who employs fewer than 50 full-time or full-time equivalent employees in the prior calendar year (but not a new employer)
- + Employer with seasonal workers- the workforce exceeds 50 full-time and full-time equivalent employees for 120 days or less during a calendar year and the excess of 50 employees during that period were seasonal workers

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Who Qualifies As a Full-Employee?

- + **Full-time Employee:** Employee who is employed in the United States on average at least 30 hours of service a week OR at least 130 hours in a calendar month
- + **Full-time Equivalent Employee:** Combination of employees working in the United States who have fewer than 30 hours a week individually, but combined equal to a full-time employee
- + **Example:** An employer is considered an ALE if it has 30 full-time employees (each working at least 30 hours a week) and 60 full-time equivalent employees (each working at least 10 hours a week).

NOTE: A retiree is NOT a full-time employee unless that retiree was a full-time employee for any month of the calendar year

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What If I Am a New Employer This Year?

As a new employer (meaning you did not exist at all during calendar year 2014), you may still qualify as an ALE and are subject to the filing. If you reasonably expect to employ, or actually employ, an average of at least 50 full-time or full-time equivalent employees during the current calendar year, you qualify as an ALE.

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Is Transition Relief Available?

There are special circumstances that qualify employers for short-term relief from reporting penalties:

- + If the health plan you offer runs on a non-calendar year plan that starts in 2014 and runs into 2015, you will not be subject to a potential payment until the first day of the 2015 plan year.
- + If you are close to 50 full-time or full-time equivalent employees, instead of using the prior 12 months to determine your number of employees, you may use any consecutive 6-month period during 2014 to do so.

There are other ways to qualify for [transition relief](#). Please contact Kegler Brown if you believe you are eligible.

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What Forms Do I Use?

- + **Form 1095-C:** The purpose of this form is two-fold: it provides the IRS with information about health insurance coverage offered and any safe harbors/other relief available to the employer, and provides information to full-time employees for their own tax return filing. You will fill out this form for each employee, and provide a copy to that employee upon filing.
- + **Form 1094-C:** This form serves as the transmittal document for Form 1095-C, as well as provides a summary of aggregate employer-level data. The information on this form will help the IRS determine if you owe a Shared Responsibility payment and the amount.

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What Information Do I Need?

While 2015 specific instructions have not yet been posted, general instructions on the forms can be found [here](#).

Information needed to fill out Form 1094-C includes:

- + Information about your organization
- + Information about the health coverage offered
- + Number of forms 1095-C that are issued to employees
- + Full-time employee count by month
- + Total employee count by month
- + If you are eligible for certain transition relief

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Information needed to fill out Form 1095-C includes:

- + Information about the organization
- + Information, by month, about:
 - + Coverage offered
 - + Who is a full-time employee
 - + Number of months employee was enrolled in coverage
 - + Employee's share of monthly premium (for minimum value coverage)
 - + Number of months employer met affordability safe harbor and whether other relief applies
 - + If there is a self-insured plan offered, information about those enrolled individuals

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When Should I Begin Preparing The Forms?

You should begin preparing the forms *as soon as possible*, that way you can meet all necessary deadlines.

- + Forms 1094-C and 1095-C must be filed by February 29, 2016 (paper filing) or March 31, 2016 (electronic filing- mandatory if filing 250 or more forms).
- + Copies of Form 1095-C must be furnished to each employee by mail or electronically (with affirmative consent) by February 1, 2016.

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Who Should I Call If I Have Questions?

- + Should you have any questions regarding the filing of these forms, please do not hesitate to call [Tom Sigmund at Kegler Brown](#) for assistance.
- + You can also reference the [IRS FAQ website](#) regarding Employer Shared Responsibility payments for further information.



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