

October 25, 2018

2018 EMPLOYER REPORTING

The IRS recently released final forms and instructions for the 2018 employer reporting. The good news is that the process and instructions have not changed significantly from last year. However, the IRS has started to assess penalties on the 2015 forms. For that reason, employers should make sure they complete the forms accurately.

The final 2018 forms and instructions can be found at:

- Form 1094 C - <https://www.irs.gov/forms-pubs/about-form-1094-c>
- Form 1095 C - <https://www.irs.gov/forms-pubs/about-form-1095-c>
- Form 1094 B – <https://www.irs.gov/forms-pubs/about-form-1094-b>
- Form 1095 B - <https://www.irs.gov/forms-pubs/about-form-1095-b>

Employers with self-funded plans can use the B forms to report coverage for anyone their plan covers who is not an employee at any point during the year.

The due dates for 2018 are as follows:

- Individual statement (1095 C), due to employees January 31, 2019
- Employer transmittal (1094 C and copies of each 1095 C), due to IRS on:
 - February 28, 2019 (paper)
 - April 1, 2019 (electronically)

Be sure to file these forms on time. The IRS will assess late filing penalties if you file them after they are due. The instructions explain how to apply for extensions if you think you may miss the deadlines.

The 1095 C form can be sent to employees electronically with the employee's consent, but that consent must meet specific requirements. The consent criteria include disclosing the necessary hardware and software requirements, the right to request a paper copy, and how to withdraw consent. They are the same consent requirements that apply to the W-2.

Employers must submit the forms electronically if they file 250 or more 1095 Cs. The instructions explain how to request a waiver of the electronic filing requirement.

Some important reminders as your organization embarks on the annual process:

- The 1094 C form should have the employer name and EIN associated with the name and EIN used on the employee's W-2.
- A 1095 C form must be sent to each full-time employee, unless the employee was in a limited non-assessment period (LNAP) for the all the months in a calendar year that the employee was employed. An LNAP would be a new hire waiting period or new hire measurement period if the employee is lookback measured.
- The penalties remain significant:
 - The penalty for failing to file a correct 1095 C to the IRS is \$270 per return capped at \$3,275,500.
 - The penalty for failing to provide a correct 1095 C to an individual is \$270 per return capped at \$3,275,500.
 - Penalties may be increased if an employer intentionally disregards the requirement to provide these statements.
 - Penalties may be waived if the failure was due to a reasonable cause and not willful neglect.
- Remember you must submit at least one 1094 C. If you submit more than one 1094 C form, one must be marked as the "authoritative transmittal."
- If you are using "1A" in line 14, you need to check "Qualifying Offer" method on the Form 1094 C, and you can leave lines 15 and 16 blank on the 1095 C.
- Your plan start month on the 1095 C remains optional for 2018.
- Line 14 needs to have a code in all twelve months (or in the twelve months box if the code is the same for all twelve months).
- Line 16 does not require a code in all boxes, but this is the box that explains why your organization should not be assessed a penalty. It is important to have a code in all twelve months on line 16 (unless 1A is in line 14).
- For full-time employees covered under a separate plan run by their union, the multi-employer interim guidance remains in force. If you provide funds to the union plan for each full-time union employee, you still need to provide a 1095 C. You would enter 1H on line 14 and 2E on line 16 for these employees.
- COBRA coding has not changed:
 - Former employee, spouse or dependent – Enter code 1H on line 14 and 2A on line 16. If your plan is self-funded, you would indicate the months of coverage in Part III (even if it is COBRA coverage).
 - If the employee remains an employee (reduction of work hours), the COBRA election is reflected in line 14. So if an employee had family coverage, but only elected COBRA on himself, then line 14 would be coded 1B. Code B indicates coverage is only offered to employee.

- Remember, line 15 may not reflect the coverage option or coverage tier the employee elects. If you need to complete line 15, it should:
 - Be the lowest cost single contribution for coverage the employee is eligible for that has a 60 percent or better value
 - Wellness incentives may have to be included:
 - Use non-tobacco rates if your plan has a tobacco surcharge
 - For a wellbeing incentive for any other activity, use the rate that reflects the employee has not met the wellbeing requirement
 - Opt-out bonuses may have to be included:
 - Non-conditional – add monthly opt-out amount to contribution for line 15
 - Conditional – **not required** to add opt-out amount to contribution amount

If you are responsible for completing these forms for your organization, read the instructions before you start the process.

So far the IRS **has not delayed the due date for sending the 2018 1095 C forms** to individuals. In previous years, the IRS pushed this due date back. In addition, the IRS in previous years has recognized good faith compliance with these rules. The IRS has not extended good faith compliance for the 2018 filing. MMA MI will keep you posted if the due date is delayed or good faith compliance efforts will be recognized.

Employers must keep copies of these returns for three years. Many employers assessed penalties in 2015 needed to access these forms to work on appeals.

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