

12/17/24 Alert 2024-05

## Employee Benefits Compliance

### Legislation Simplifies ACA Reporting and Limits Pay or Play Liability with Much Needed Statute of Limitations and Extended Assessment Response Deadline

#### Background

The Affordable Care Act (ACA) created two reporting requirements, Minimum Essential Coverage (MEC) and Applicable Large Employer (ALE) reporting. MEC reporting requires providers of MEC, which are generally insurers or sponsors of self-funded medical plans, to report information about that coverage to covered individuals and the Internal Revenue Service (IRS). ALE reporting requires employers subject to Pay or Play rules (ALEs) to identify their full-time employees and report details on their offer of coverage to full-time employees and the IRS. Both MEC and ALE reporting have required employers and/or insurers to furnish individual statements and then transmit those statement to IRS. ALE reporting, with or without additional MEC information required for self-funded plans, is done using Form 1095-C. For insurers, MEC reporting is done using Form 1095- B. These Forms are sent to IRS with an accompanying 1094 transmittal form. Importantly, ACA reporting is how the IRS gathers information to assesses Pay or Play penalties, which are issued via a 226J Letter. Historically, 226J Letters have had tight response deadlines that have proven difficult for employers to meet and there has been no statute of limitations on when assessments can be issued.

#### Introduction

This week, Congress passed and President Biden is expected to sign, [The Paperwork Reduction Act](#) and the [Employer Reporting Improvement Act](#). As discussed below, the Paperwork Reduction Act largely eliminates the need to furnish Form 1095-Cs to individuals/employees for either MEC or ALE reporting if certain conditions are met. The Employer Reporting Improvement Act allows the use of date of birth in lieu of a social security number (SSN) or taxpayer information number (TIN) for MEC reporting, which eliminates a longstanding problem of trying to correct inaccurate or missing SSNs/TINs. The Employer Reporting Improvement Act also establishes a 90-day deadline for ALEs to respond to IRS Pay or Play assessment letters (226J Letters) and creates a six-year statute of limitations for IRS penalty assessments, which was previously open ended.

## The Paperwork Reduction Act

The Paperwork Reduction Act helps employers by significantly reducing, if not largely eliminating, the number of physical forms that employers must distribute to employees under the ACA. Specifically, employers are no longer required to send Forms 1095-Cs to individuals as part of their MEC<sup>1</sup> and/or ALE reporting obligations, unless a form is affirmatively requested. Upon request, employers and/or insurers must provide a form by January 31 or 30 days after the date of the request, whichever is later. Employers and insurers must give individuals timely notice of their right to request a form, in accordance with requirements to be set later by the IRS. This new rule applies to statements for calendar years after 2023 which includes the current 2024 calendar year reporting cycle. The requirement to submit 1095-C Forms annually to the IRS with a 1094-C transmittal by ~March 31<sup>st</sup> remains unchanged.

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Employers may still need to comply with state individual mandate and reporting requirements. Depending on employer size and/or plan funding, most of these mandates require employers to furnish statements of coverage to individuals and file them with the state tax authority. For most states, employers have historically satisfied some or all of their state reporting obligations by furnishing their federal 1095-C Forms to individuals as previously required by the ACA. Employers subject to these state mandates should confirm with their ACA reporting vendor that they will continue distributing 1095-C Forms in a manner that satisfies any state reporting requirements. For more information see our Alliant Insight on [State Individual Mandates](#).

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## The Employer Reporting Improvement Act

### Date of Birth Reporting Flexibility

The Employer Reporting Improvement Act simplifies MEC reporting by allowing the use of date of birth instead of a SSN/TIN on 1095-B and C Forms, eliminating a longstanding problem of trying to correct inaccurate or missing SSNs/TINs. MEC reporting has historically required listing the SSN/TIN of the covered individual and any covered dependents. Under previous rules an individual's date of birth could be used in lieu of an SSN/TIN on a 1095-C Form only if the employer took certain steps to solicit the SSN/TIN and was unsuccessful in doing so on three separate occasions. Employers also struggled to get accurate SSN/TINs from individuals and covered dependents, which created friction with covered individuals as well as problems successfully transmitting forms to IRS. Under the new law, the IRS explicitly allows an individual's date of birth to be substituted for the individual's SSN/TIN

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<sup>1</sup> Note that with respect to MEC reporting, this is codification of [prior guidance](#) applicable to insurance issuers eliminating the need to furnish 1095-B Forms. The expansion of this relief to ALEs for both ALE and MEC reporting is significant.

if the SSN/TIN is not available. Although no additional details are provided on whether employers and/or insurers still need to solicit SSNs/TINS for ACA reporting (they are required for other purposes, including Medicare Secondary Payer Reporting), this is welcome relief. This new reporting flexibility applies to returns due after December 31, 2024, which includes the current 2024 calendar year reporting cycle.

### **Extended Assessment Response Deadline and New Statute of Limitations**

As noted above, Pay or Play penalties are assessed based on ACA reporting and using a 226J Letter. Historically, 226J Letters have a 30-day response deadline, which has proven difficult for many employers to meet. The Employer Reporting Improvement Act now requires the IRS to give ALEs at least 90-days to respond to 226J Pay or Play penalty assessments. This new 90-day response time applies to proposed penalty assessments issued in the 2025 tax year and thereafter. Finally, the Employer Reporting Improvement Act establishes a six-year statute of limitations constraining when the IRS can seek to collect Pay or Play penalties, which is significant in that there was no prior statute of limitations. This created potentially open-ended liability for employers and successor employers. The new six-year statute of limitations is effective for returns due after December 31, 2024, which includes the current 2024 calendar year reporting cycle.

### **Flexibility for Consent to Electronic Disclosure**

Lastly, under the Employer Reporting Improvement Act, the IRS will allow employers and insurers to respond to requests for 1095-B and C Forms by providing them in an electronic format if the individual has provided prior consent to electronic distribution of these forms. An individual will have consented to receive an electronic form if they have affirmatively consented at any time to the "person" required to create the form to receive it in an electronic format. An individual may revoke such consent in writing. These electronic delivery rules are effective for statements due after December 31, 2024, which includes the current 2024 calendar year reporting cycle.

## **Conclusion**

It is significant that ALEs will no longer be required to furnish Forms 1095-C to individuals as either part of MEC or ALE reporting, unless they receive a request. However, the requirement to file 1095-C Forms with the IRS each year remains unchanged, which means that employers will still need to work with vendors to generate accurate 1095-C Forms. As noted above, ACA reporting and the content of 1095-C Forms is what gives rise to IRS Pay or Play penalty assessments. Next, it will be important to work with ACA reporting vendors to formulate procedures on how to respond to employee requests for 1095-C Forms and on when a date of birth will be used in lieu of a SSN/TIN. Employers should continue to work with their counsel and broker upon receipt of a 226J Letter to ensure timely and

thorough responses. The extended response deadline and introduction of a statute of limitation are welcome news.

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