

Welcome

Employee benefits laws change rapidly —
UBA Partner Firms help their clients stay one step ahead
with ongoing expert compliance resources.

This webinar is intended to provide general compliance information regarding employee benefits laws. Please consult your legal advisor for specific legal advice.

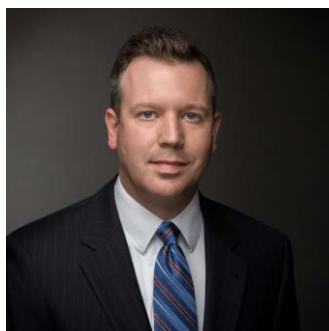


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Getting It Right: ACA Counting, Tracking, and Reporting



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Agenda

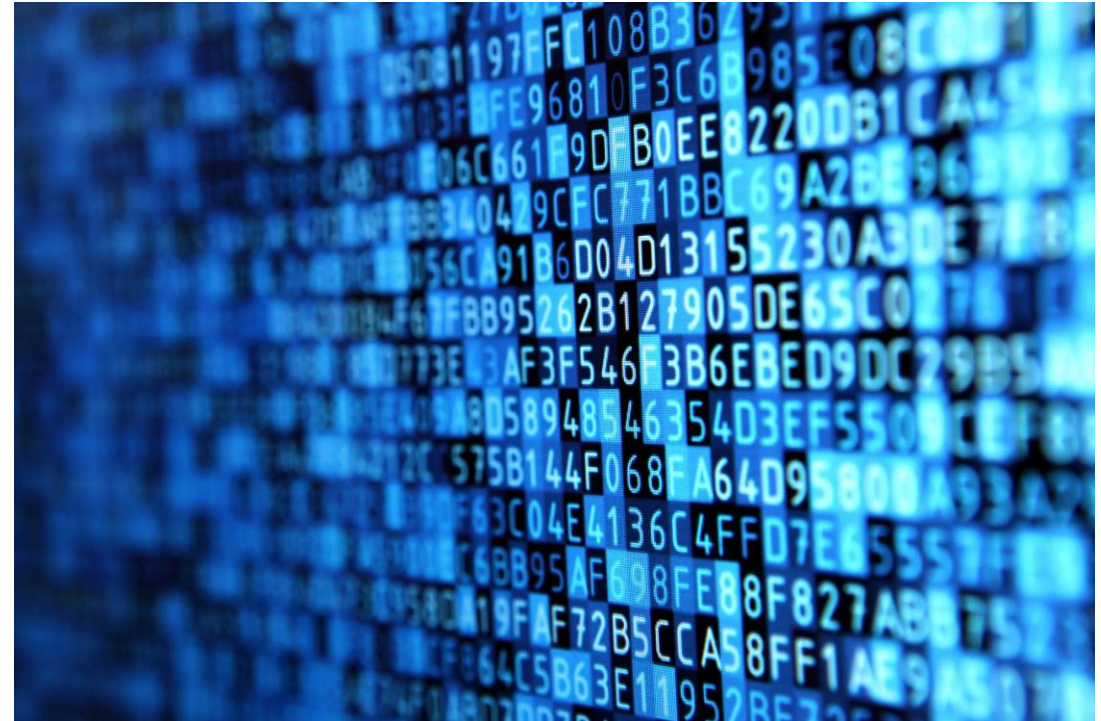
1. Avoiding common errors
2. Measurement and stability periods
3. Coordinating with sister companies, controlled groups, and M&A
4. How to prepare to be an applicable large employer
5. How do gig workers fit in?
6. Electronic submission requirements

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Avoiding Common Errors in ACA Coding

- Applicable large employers (“ALEs”) with fully insured plans report offers of coverage using Forms 1094-C and 1095-C.
 - Insurer reports using Forms 1094-B and 1095-B.
- ALEs with self-insured plans report offers of coverage using Forms 1094-C and 1095-C.
- Non-ALEs with fully insured plans do not report; insurer reports using Forms 1094-B and 1095-B.
- Non-ALEs with self-insured plans report using Forms 1094-B and 1095-B.



Focus on Form 1095-C

600120

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

2022

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				Employee's Age on January 1				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)													
17 ZIP Code													

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Cat. No. 60705M

Form **1095-C** (2022)

Form 1095-C, Line 14

- Line 14 indicates the type of coverage offered.
 - There are 21 different codes that can be used on line 14.
- Typical codes for line 14:
 - 1C: Minimum essential coverage (“MEC”) providing minimum value (“MV”) offered to employee; at least MEC offered to dependent(s) (not spouse).
 - 1E: MEC providing MV offered to employee and at least MEC offered to dependent(s) and spouse.
 - 1H: No offer of coverage.

Form 1095-C, Line 16

- Line 16 reports information regarding the individual's employment status and/or the offer of coverage.
 - There are 8 different codes that can be used on line 16.
- Typical codes for line 16:
 - 2A: Employee not employed on any day of the calendar month.
 - 2B: Employee not a full-time employee.
 - 2C: Employee enrolled in offered coverage.
 - 2D: Employee in a limited non-assessment period.
 - 2F, 2G, or 2H: Offered coverage is affordable under the Form W-2, Federal Poverty Line, or Rate of Pay Safe Harbor, respectively.

Common Errors on Lines 14 and 16

- Line 14 has 1H (no offer of coverage), but no code included on line 16.
 - Individual did not receive an offer of coverage because not employed that month.
 - Line 16 should have code 2A (employee not employed on any day that month).
- Line 14 has 1H, but no code included on line 16.
 - Employee is part-time and did not receive an offer of coverage.
 - Line 16 should have code 2B (employee not full-time).
- Line 14 has 1E (coverage offered), but no code included on line 16.
 - Coverage is “affordable” for employee under the Form W-2 Safe Harbor.
 - Line 16 should have code 2F.

Tips for Preventing Reporting Errors



- Make sure the code for each month matches the individual's employment status for that month:
 - Check for mid-year hires.
 - Check for mid-year terminations.
 - Check for full-time status.
- If offered coverage is “affordable” under a safe harbor, confirm correct safe harbor code is included on line 16.
- Confirm offers of coverage are properly reported on Form 1094-C, Part III, column (a).

Mastering Lookback, Measurement, and Stability Periods

- The Affordable Care Act (“ACA”) requires ALEs to offer MEC to all full-time employees (and their dependents) to avoid being subject to an employer shared responsibility payment (“ESRP”).
 - For ACA purposes, “full-time” means an employee averages at least 30 hours/week.
- If an ALE offer MEC to full-time employees (and their dependents), but the coverage does not provide MV and/or is not “affordable,” the ALE may be subject to an ESRP.
- Two ways to determine whether an employee is “full-time” for ACA purposes:
 - Monthly measurement method.
 - Look-back measurement method.

Look-back Measurement Method

- An employer determines an employee's status as full-time for a future period (called the stability period) by counting the employee's hours of service during a prior period (referred to as the measurement period).
- The measurement period can range from three to 12 months and must occur at the same time each year, and the stability period must be the longer of:
 - Six consecutive calendar months; or
 - The length of the standard measurement period.
- If an employee averages 30 hours/week during the measurement period, the employee must be offered coverage for the entirety of the stability period, regardless of hours worked during that period.
- This method is typically used, especially for workforces where employees' hours vary.



Newly Hired Employees

- Is the employee variable hour, seasonal, part-time, or full-time?
 - New variable hour, seasonal, and part-time employees may have “full-time” status determined using the look-back measurement method.
- Newly hired variable hour, seasonal, and part-time employees have “full-time” status determined during an initial measurement period (“IMP”).
 - Special rule applies if employee changes to a “full-time” position during the IMP.
- If average 30 hours/week during IMP, treat as “full-time” in initial stability period (“ISP”).
 - ISP must be at least six calendar months and not shorter than IMP.
 - Employer not subject to ESRPs for the IMP if it offers MEC providing MV no later than the first day of the ISP.

Coordinating With Sister Companies, Controlled Groups, and M&A Transactions



- Some businesses are so closely connected that they are treated as a single employer for various purposes under federal tax law.
- One type of such relationship is a “controlled group”:
 - Parent-subsidiary controlled group.
 - Brother-sister controlled group.
 - A combined group.
- Another type of relationship is an “affiliated service group.”
- Complex rules determine whether entities are part of a controlled group or an affiliated service group.

Why Ownership Matters Under the ACA

- All employees of all the entities that are part of the controlled group or an affiliated service group are counted to determine whether the entities are ALEs.
 - An entity may not, on its own, meet the 50 full-time employee headcount to be an ALE, but may be an ALE when all the employees of all the members of the controlled group or affiliated service group are counted.
 - ALE status is determined by looking at the number of full-time employees and full-time equivalents in the prior calendar year.
- If the entities are ALEs, then the offer of coverage and reporting rules apply to each entity.

M&A Considerations

- An M&A transaction may result in an ALE post-closing.
- Due diligence is important. For example:
 - Are the parties currently ALEs?
 - What offers of coverage were made?
 - Were reporting forms properly filed/furnished?
 - Are there any outstanding or potential ESRPs?
 - Are there any outstanding or potential penalties for failing to file/furnish reporting forms or not filing/furnishing them by the deadlines?
- Transaction documents should address ACA issues.



How To Prepare To Be an ALE



- If an entity may be close to being an ALE, consider the following:
 - Can it adjust the number of employees or employees' hours of service to avoid being an ALE?
 - Will it be able to offer coverage to full-time employees and their dependents when it becomes an ALE?
 - Will that coverage be "affordable"?
 - Know the deadlines for filing/furnishing applicable forms (e.g., Forms 1094-C/1095-C)
 - Confirm who will prepare, file, and furnish the reporting forms.

Where Do Gig Workers Fit In?

- The ACA defines an “employee” using the common law standard.
 - A failure to properly classify a “gig worker” as an employee could result in ESRPs (and other issues).
- Gig workers are generally considered to be freelance workers or independent contractors.
 - If a gig worker is not a common law employee, an ALE is not required to offer the gig worker coverage.

Common Law Employee vs. Independent Contractor

- In general, a common law employee is one whom an employer has the right to control and direct, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done.
- Other factors to consider when determining control are:
 - Right to discharge.
 - Having the ability to control.
 - Who furnishes the tools and a place to work for the individual who performs the services.
- Detailed legal tests to determine employee status.

How Have Electronic Submission Requirements Changed?

- ALEs with 250 or more forms must file their ACA forms with the IRS electronically.
- This threshold will be lowered in 2024, meaning that almost all employers must file electronically.
 - Proposed regulations reduce this threshold and require corrected information returns to be filed in the same manner as original information returns.
- In order to meet this requirement, an employer must obtain a Transmitter Control Code (“TCC”) from the ACA Information Returns (“AIR”) program.
- Consider contracting with third party to file electronically.

Submitting the ACA Application for TCC

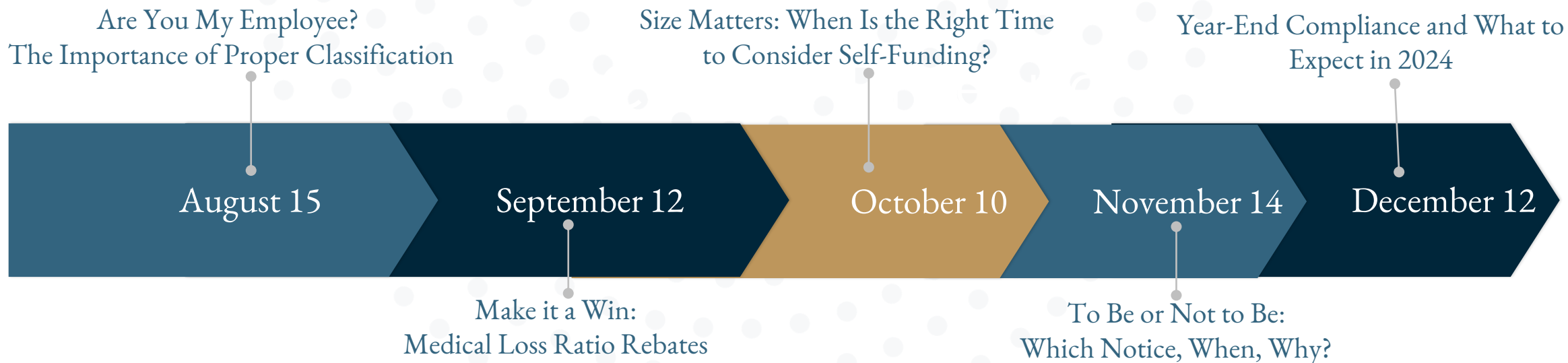
- ACA Information Returns must be filed through AIR using a TCC.
- If an employer does not engage a third party to file its forms electronically, it will need to complete its own ACA application.
- Detailed application process and filing guidance is available on the IRS website:
 - <https://www.irs.gov/e-file-providers/affordable-care-act-information-returns-air>

Q&A



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with ongoing expert compliance resources.



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Thank You

