

**BASIC ACA Elevate**

# **ADMINISTRATION MANUAL**



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**Welcome to ACA Elevate by BASIC.** This comprehensive program works with you help ensure your peace of mind when addressing the complexities of the Affordable Care Act (ACA) Employer Shared Responsibility Mandate.

This Administration Manual provides guidance to manage your ACA Elevate service. Besides detailing the requirements necessary to keep you compliant with the Employer Shared Responsibility Mandate, this document will familiarize you with all the tools we offer to help you do so.

If this is your first year with BASIC, an On-Boarding Specialist will call to help you start you on the right foot. Meanwhile, it is vital that you review this manual prior to that call. The contents will help you make pertinent ACA determinations so you can move forward with the tracking and reporting requirements.

Many determinations mandated by the ACA are detailed and specific to your plan. Your On-Boarding Specialist cannot advise you regarding these required determinations. After you review this manual, and prior to the On-Boarding call, we recommend that you pose appropriate questions to your benefits advisor, benefits counsel, or agent.

#### **Commonly Used Acronyms:**

- ACA – Affordable Care Act
- ALE – Applicable Large Employer – See “Are you an Applicable Large Employer (ALE)?”
- FTE – Full-time employee – See Addendum A, “ALE Worksheet”
- MEC – Minimum Essential Coverage – See “Does your Plan offer Minimum Essential Coverage?”
- MV – Minimum Value – See “Does your Plan offer Minimum Value?”



# Penalties for Non-Compliance

## Two 4980H Penalties

Under ACA, substantial penalties can result when an employer fails to offer health coverage to full-time employees (FTE). Two penalties apply. Commonly called the 4980H(a) Penalty and the 4980H(b) Penalty. When addressing both Penalties, they are simply referred to as the 4980H Penalties.

The 4980H(a) Penalty applies if you fail to offer ACA-compliant coverage (called Minimum Essential Coverage, or MEC) to at least 95% of your FTEs and their dependents. Possible annual 4980H(a) Penalties of \$2,970 may be imposed for each FTE beyond the first 30 employees, but only if one or more FTE obtains federally subsidized coverage through an ACA Exchange.

**Note:** Employers who offer an Individual Coverage HRA (ICHRA), ICHRAs are considered eligible employer-sponsored plans, so an applicable large employer (ALE) can count ICHRA offers toward the 95% threshold for avoiding penalties under Code 4980H(a).

The 4980H(b) Penalty applies (i) if you offer ACA-compliant coverage to at least 95% of your FTEs and their dependents, thereby satisfying the test for the 4980H(a) Penalty stated above, but (ii) your Plan fails to provide Minimum Value (MV) or is not affordable, and (iii) at least one FTE obtains federally subsidized coverage through an ACA Exchange. The 4980H(b) Penalty is per subsidized FTE.

In no case will the liability under Section 4980H(b) exceed the maximum potential liability under Section 4980H(a).

The 4980H Penalties are determined per month. Lesser prorated amounts pertain if a Penalty applies for a portion of a year only. The 4980H Penalties are not tax deductible.

You will be liable for a 4980H Penalty only if one or more full-time employee is certified by the ACA Exchange as having received a premium tax credit or cost-sharing reduction.

## Information for Filing Penalties

For failure to file a required information return, the general penalty is \$310 per return, with an annual cap on total penalties of \$3,783,000. If the failure relates to an IRS filing and an Employee Statement, as in the case with ACA Reporting, the penalties are doubled. If a failure is caused by intentional disregard, the penalty can be \$620 per return, with no calendar year cap.

# Scope of Services



This product is written for single employers (including controlled groups) who sponsor a group health plan. It is neither designed nor intended for complex plans such as Multiple Employer Welfare Plans, Voluntary Employee Benefits Associations.

BASIC is not a law firm. We do not provide legal or tax advice. All written or verbal communications provided are general in nature and not intended to constitute legal or tax advice.

ACA Elevate may have legal and tax consequences. Any questions regarding Plan Sponsor's particular needs, requirements, circumstances, or the tax consequences of ACA Elevate must be directed to the Plan Sponsor's own advisor(s) at the Plan Sponsor's expense.

This Manual outlines each step and provides the information you need to ensure that your Plan meets the ACA Employer Shared Responsibility Mandate. Follow each step outlined herein to avoid a 4980H Penalty.

## Are you an Applicable Large Employer (ALE)?

Determine the size of your workforce, using the ACA rules for counting employees. This calculation will dictate when your reporting requirement begins.

**Note:** The general rule is that in order to be subject to the ACA Employer Shared Responsibility provisions for a calendar year, an employer must have employed during the previous calendar year at least 50 FTEs or a combination of full-time and full-time equivalent employees that equals at least 50.

Appendix A provides an easy-to-use Worksheet to determine your status. If you are on the cusp you will want to update this Worksheet for each calendar year so that you can monitor your status and reporting requirements.

## Are you a new ALE?

A new employer can determine ALE status during its first Plan Year based on the employer's reasonable expectations at the time the business comes into existence. This expectation should be documented based on commercially acceptable standards for the business, such as including a factor to service a projected sales quota for the year. If subsequent events cause the actual number to exceed that reasonable expectation, the employer is not considered an ALE for the initial calendar year.

An employer not in existence on any one business day in the prior calendar year is deemed an ALE for the current calendar year if (a) the employer is reasonably expected to employ an average of at least 50 FTEs (taking into account equivalent FTEs) on business days during the current calendar year and (b) the employer employs an average of at least 50 FTEs (taking into account equivalent FTEs) on business days during the calendar year. (See Appendix A for equivalent FTE definition and ACA FTE counting rules.)

## Does Your Plan Offer Minimum Essential Coverage (MEC)?

Minimum Essential Coverage (MEC) is defined as accident and health coverage offered under an employer-sponsored group health plan.

MEC does **not** include the following:

- » excepted benefits (most health FSA plans are excepted)
- » fixed indemnity coverage
- » life insurance
- » dental or vision coverage

**Compliance Note:** The ACA includes benefits and administrative mandates for all insured and self-funded health plans, referred to as either the Public Health Service Act Mandates (PHSA Mandates) or ACA Market Reforms. The PHSA Mandates include items such as but not limited to providing “essential health benefits” (a list of benefits described under the ACA), dependent coverage to age 26, prohibitions on lifetime maximums and preexisting condition limitations, and coverage for preventive benefits. Your Plan’s compliance with the PHSA Mandates is not a part of this product. Your insurance carrier or third-party administrator will be able to certify that your Plan meets these requirements. The penalty for failing to satisfy the PHSA Mandates is a \$100/day excise tax per applicable employee (which is \$36,500 per year, per employee) under Section 4980D of the Internal Revenue Code.

## Is Your Plan Affordable?

For 2024, if your lowest cost employee-only option is 8.39% or less of your FTE’s household income then the coverage is deemed affordable. Because you don’t know your employee’s total household income, you should use information that is available to you to determine whether you offered affordable coverage under a safe harbor. These safe harbors are available only if your Plan satisfies the MEC and MV tests above.

The preferred method is also the easiest: the Rate of Pay Safe Harbor. This safe harbor provides the sole method for satisfying affordability without analyzing each employee’s wages and hours. In addition, you need not wait for an employee’s W-2 Form after the end of the calendar year to make the determination.

Under the Rate of Pay Safe Harbor, the employer assumes a rate of 130 hours per month and multiplies 130 by an hourly employee’s rate of pay, regardless of whether an employee worked more or less than 130 hours during any calendar month.

For example, if the lowest paid hourly FTE earns \$10 per hour on the first day of the plan year, then the employer may require an employee contribution of \$109.07 for the lowest cost employee-only option. This is 8.39% x (\$10 multiplied by 130 hours). The chart provides some insight into this relationship.

**Hint:** When determining the rate of pay for the contribution calculation, employers may use the rate of pay required by the local minimum wage law in effect or the federal poverty line.

An offer of coverage to salaried employees uses the salaried employee’s monthly salary (instead of 130 multiplied by the hourly rate of pay). An ALE may consistently use any reasonable method for converting payroll periods to monthly salary.

**Note:** The Rate of Pay Safe Harbor cannot be used for tipped employees or for employees who are compensated solely on the basis of commissions. Instead, employers use the two other affordability safe harbors— Form W-2 wages and federal poverty line—to determine affordability for employees whose compensation is not based on a rate of pay.

Lowest Hourly Rate of Pay	Lowest Monthly Cost of Employee-Only Coverage
\$10.00	\$109.07
\$12.00	\$130.88
\$14.00	\$152.70
\$16.00	\$174.51
\$18.00	\$196.33
\$20.00	\$218.14
\$22.00	\$239.95
\$24.00	\$261.77
\$26.00	\$283.58
\$28.00	\$305.40
\$30.00	\$327.21



The W-2 Safe Harbor allows the employer to use the W-2 wages reported in lieu of attempting to collect the total household income for a family. The W-2 wages (as reported in box 1) are divided by 12 and multiplied by 8.39% to calculate the allowed employee contribution. You must wait until the Form W-2 is available after calendar year end to make the determination of affordability, creating a risk for the outcome. If the Rate of Pay Safe Harbor is not available, using the Federal Poverty Line Safe Harbor is recommended. The Federal Poverty Line Safe Harbor allows the employer to use the federal poverty amount for a single individual for the applicable calendar year, divided by 12.

For example, for 2023 the annual single person federal poverty level for a calendar year plan is \$14,580, or \$1,215 per month ( $\$14,580/12$ ), and the lowest cost self-only coverage is \$101.94 per month. (8.39% of  $\$14,580/12$ ).

## Employee Contribution

The Employee Contribution for the lowest cost employee-only option can be affected by the following items:

1. The amount of a Cafeteria Plan Employer contributions, sometimes called Flex Credits, is allowed to lower the Employee Contribution total for ACA affordability only if the amount constitutes a “health flex contribution.” Further, a health flex contribution can be applied only to the premium for the employer-sponsored group health plan or medical expenses under the health FSA. A health flex contribution cannot be cashed out at the time of enrollment (arrangements where the employee can either use the FLEX Credits for benefits or they will be added to the Employee’s taxable income are not allowed for health flex contributions).
2. If integrated with your employer sponsored group health plan, HRA Funding newly made available can lower the Employee Contribution for ACA affordability only if the benefits under the HRA are limited to the employee’s share for services covered under the employer-sponsored group health plan coverage.
3. McNamara-O’Hara Service Contract Act (“SCA”), the Davis-Bacon Act, (“DBRA”) contributions will reduce Employee Contribution for affordability until additional guidance from the IRS is provided. See your Benefit Advisor for details.
4. Post tax employer contributions can increase the Employee Contribution by adding the loss of these funds towards the Employee Contribution as an additional cost.

The Employer needs to determine which method of affordability determination they will use, and how much they will contribute to the employee’s account.

Individual Coverage HRA (ICHRA) will be deemed affordable if ALE bases contribution on 1) the lowest cost silver plan for the employee for self-only coverage offered through the Exchange in the rating area in which the employee’s primary site of employment is located, or of the lowest cost silver plan for the employee in the rating areas in which the employee resides; or 2) (if ALE contributes one set amount to all individuals) on the lowest cost silver plan that has the highest cost premiums for self-only coverage for any of its full-time employees (that is nationally or based on multiple rating areas or states).

- **Location for Affordability with ICHRA:** For purposes of the affordability safe harbor, the employee’s primary site of employment is the location where the employer reasonably expects the employee to perform services on the first day of the plan year. Note that the primary site of employment must be updated if the employee’s actual work location changes and the employer expects the change to be indefinite. For remote employees, an employer should use the location where the employee reports as the primary site of employment.
- **Affordability and Age for ICHRA:** An employee’s age for the entire ICHRA plan year will be deemed to be the age of the employee on the first day of the plan year. For employees who become eligible during the ICHRA plan year, the age is reported based on when their ICHRA coverage becomes effective.
- **Affordability Look Back Safe Harbor:** For an ICHRA with a calendar year plan, employers can use the monthly premium for the applicable lowest cost silver plan from January of the prior calendar year to determine affordability. ICHRA plans with non-calendar year plans use the monthly premium of the applicable lowest cost silver plan from January of the current calendar year. Note employers have to use current plan year ages even with prior year premiums.

## Does your plan offer coverage to your FTE's dependents?

Under the ACA you must offer coverage to your FTE's dependents, defined as the FTE's natural or adopted son or daughter who has not attained age 26. The definition excludes a stepson, stepdaughter, eligible foster child, and an individual who is not a United States citizen or national, unless such individual is a resident of the U.S. or a country contiguous to the U.S. A child attains age 26 on his/her 26th birthday and is deemed a dependent for purposes of Section 4980H for the entire calendar month in which he or she attains age 26. Absent knowledge to the contrary, an ALE may rely on an employee's representation about his/ her children and their ages.

The term "dependent" does not include the spouse of an employee.

## Introduction

The ACA has two reporting requirements related to the Employer Shared Responsibility Rules, commonly referred to as 6055 Reporting and 6056 Reporting, and both referring to actual code sections of the ACA.

- **6055 Reporting:** Section 6055 imposes reporting requirements on anyone who provides another person MEC. It requires reports to your employees to document their coverage, or lack of coverage, so that they can complete their individual tax returns. Similar to Form W-2 reporting, this is often referred to as the “Individual Mandate.” Beginning 2019, individuals will no longer be penalized for failing to obtain acceptable health insurance coverage. However, the employer shared responsibility rules and related Section 6055 reporting requirements are still in place.
- **6056 Reporting:** Section 6056 requires an ALE to report to the IRS. The IRS then determines whether the employer owes a 4980H Penalty and verifies employee coverage status. This is often referred to as the “Employer Mandate.”

## Do you need to report?

All employer-sponsored group health plan coverage (insured and self-funded) must be reported annually to the IRS, and must be reported annually to each FTE for any month of a calendar year. These general rules apply regardless of the employer’s size.

The filing requirements, what forms are used, and who completes the forms, depends on whether you are an ALE or a small employer. (See Appendix A, the ALE Worksheet to make that determination.) In addition, reporting requirements for employers with insured plans differ from those imposed on employers with “self-insured” plans. (In insured plans, group health plan benefits are covered under a group insurance contract or HMO contract with a state licensed insurer or HMO. In self-insured plans, benefits are paid from the employer’s general assets or a trust and self-administered or administered by a third-party administrator (also commonly referred to as “self-funded”).

**Multiple Coverage Rule:** If an employee is covered by more than one type of MEC provided by the same employer, the employer is required to report only one of the types of coverage.

**Example:** An employee is covered by a self-insured or insured major medical plan and a health reimbursement arrangement (HRA) provided by the same employer, the employer is required to report the coverage of the individual under only one of the arrangements.

**Note:** If an individual is covered by an HRA sponsored by one employer and a non-HRA group health plan sponsored by another employer (such as spousal coverage), each employer must report the coverage the employer provides.

## What forms must you file?

On your behalf, BASIC files the necessary forms with the IRS. BASIC also provides you with forms for your employees. (See “Filing the Returns” below.) BASIC will have the items necessary to complete these filings and forms only if you first provide accurate plan demographics on the BASIC Purchaser Details and the Data File, both described in the chart, in “Reporting Data to BASIC” content. Finally, a summary of the forms employers must file is provided in the chart as well.

## When must you file?

Forms must be filed with the IRS on or before March 31 if filed electronically of the year following the calendar year of coverage. Employee forms must be sent to the covered employees no later than January 31.

## What information does BASIC require?

On the BASIC Purchaser Details you provided the plan information required for the IRS filing. We must receive plan information prior to January 13 in order to meet federal filing deadlines. BASIC is not responsible for any late filing penalties if we receive this plan information late (after January 13 of the following year).

## Reporting Data to BASIC

The final file for the calendar year must be submitted by January 13 of the following year so BASIC can meet federal filing deadlines.

**Note:** The IRS Reporting Data and the IRS Reporting Data Summary are enclosed with this manual. These two items provide a complete description of the data needed for each employee, including definitions of items unique to the ACA. The IRS Reporting Data Summary details how this data is to be submitted to BASIC.

	Insured Health Plan BASIC Files	Self-Funded Health Plan BASIC Files
ALE w/50 or more FTEs including equivalent FTEs	Form 1094-C (all parts) Form 1095-C (Parts I and II)	Form 1094-C (all parts) Form 1095-C (all parts)
Non-ALE w/less than 50 FTEs including equivalent FTEs	Note: Insurer files Form 1095-B	Form 1094-B (all parts) Form 1095-B (all parts)

## Filing the Returns

**The IRS Filing(s):** BASIC completes necessary IRS forms using the Plan information you provided on the BASIC Purchaser Details and your Employee Workbook. BASIC will electronically submit the required filings to the IRS. If all information is provided to BASIC by January 13 of the following year, then BASIC will meet the IRS filing deadline(s).

BASIC is a registered “transmitter” and as such will transmit the data directly to the IRS on your behalf.

You will be notified of the status via email once the file has been transmitted to the IRS. The following statuses are possible:

- **Accepted**
- **Accepted with Errors**
- **Final Accepted with Errors** (*only after you have made corrections and resubmitted to the IRS*)

**Employee Statements:** Employers are required to distribute the Employee Statements prior to January 31. These Employee Statements must be furnished on paper by mail, unless the employee provides “Affirmative Consent” to receive the statement in an electronic format. See below for details and a suggested Affirmative Consent template.

The following rules are provided to assist you in deciding on the best delivery method for your employees:

- Employee Statements may be hand-delivered.
- Sending Employee Statements by mail: If the Employee Statement is mailed, it shall be sent via first class mail to the employee’s last known permanent address, or if no permanent address is known, to his/her last known temporary address. You must retain records showing an example of the mailing, to include a copy of the envelope with appropriately dated postmark, and a copy of the Statement. For another acceptable method, retain a copy of all Employee Statements with a note signed by the person who mailed the forms that details the date they were mailed.
- Providing the Statement on your website: If the Employee Statement is furnished on your website, you must notify the employee by mail, electronic mail, or in person. The notice must provide instructions for accessing and printing the Statement and must include the following statement in capital letters: “IMPORTANT TAX RETURN DOCUMENT AVAILABLE.” You are required to retain a copy of the Statement on your website through October 15 of the year following the calendar year to which the Statement relates (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). You must maintain access to corrected Statements that are posted on the website through October 15 of the year following the calendar year to which the Statements relate (or the first business day after such October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or 90 days after the corrected forms are posted, whichever is later.
- Affirmative Consent to receive the Statement by email or online. The best way to receive Affirmative Consent is by email.

If you receive Affirmative Consent on paper you must still confirm the Affirmative Consent by email. The following Affirmative Consent text can be used for this purpose.

- By responding YES to this email, I affirmatively consent to receive the ACA Coverage Reporting Statement (an IMPORTANT TAX RETURN DOCUMENT) from my employer, in an electronic format, by email or on my employer's website.
- By responding NO to this email or failing to respond, I do not consent to receive the ACA Coverage Reporting Statement (an IMPORTANT TAX RETURN DOCUMENT) from my employer, in an electronic format, by email or on my employer's website.
- I understand I may withdraw this consent by written notice to my employer, to take effect no later than 60 days after my notice was received by my Employer.
- I understand a request for a paper statement will be treated as a withdrawal of my consent.

## Form Corrections

Once your Form 1094-C and Form 1095-C are sent, you can request a correction(s) as needed. To do so, please contact your assigned ACA Specialist to determine how best to update your corrections.

**Note:** If your company is not part of a controlled group, please disregard this section.

BASIC can assist an ALE that is a member of a 'Controlled Group' file their ACA shared responsibility returns. In general, a Controlled Group has to complete all of the same items completed by a single employer plus some additional items. These additional requirements are outlined below.

## ALE Determination

If during any month of the calendar year you were a member of a Controlled Group the reporting requirements identified below will apply. The Controlled Group rules are the same as used for 401k and other retirement vehicle purposes. Related entities are treated as a single employer under section 414(b), (c), (m), or (o) including entities described under section 414(b) or (c), an affiliated service group under section 414(m), or an entity in an arrangement described under section 414(o). The employees of each member of the Controlled Group are added together to determine ALE status.

BASIC will not be able to advise you on your Controlled Group status. That determination would require a review of all corporate papers for each entity to determine ownership. Not all types of ownership are considered. This review and determination is not within the scope of services provided by BASIC. BASIC will rely on you to determine and communicate your Controlled Group status to BASIC.

## Separate Treatment

Each member entity of a Controlled Group is treated separately as follows:

- **Separate Penalties:** Under the proposed and final regulations, each ALE member is liable for its section 4980H assessable payment, and is not liable for the section 4980H assessable payment of any other entity in the controlled group.
- **Separate ACA Reporting:** Each ALE member entity of a Controlled Group files a separate Authoritative Transmittal using 1094-C. Each ALE member entity of a Controlled Group will file and send their employees the 1095-Cs.

## Additional Data Requirement

When you completed the BASIC Purchaser Details you indicated that you were a member of a Controlled Group and were required to enter the legal name and EIN number for all of the Controlled Group entities in order of size. If this was not provided then BASIC will not be able to complete the filing on your behalf.



## Some Employee Notes

1. A full-time employee who works for more than one employer that is a member of the same Aggregated ALE Group (that is, works for two separate ALE Members) must receive a separate Form 1095-C from each employer, unless the ALE Member is not treated as the employer for any calendar month in the calendar year.
2. For any calendar month in which a full-time employee works more than one ALE Member of an Aggregated ALE Group, only one ALE Member is treated as the employer of that employee for reporting purposes (generally, the ALE Member for whom the employee worked the greatest number of hours of service), and only that ALE Member reports for that employee for that calendar month. The other ALE Member is not required to report for that employee for that calendar month, unless the other ALE Member is otherwise required to file Form 1095-C for that employee because the individual was a full-time employee of that ALE Member for a different month of the same calendar year. In this case, the individual may be treated as not employed by that ALE Member for that calendar month. If under these rules, an ALE Member is not required to report for an employee for any month in the calendar year, the ALE Member is not required to report for that full-time employee for that calendar year.
3. If a full-time employee works for multiple ALE members within the same aggregated ALE group (that is, works for separate employers within the same controlled group), each separate ALE member must furnish a separate Form 1095-C to the employee.

## Business Processing Event Timeline

Event Kit	#	Event Title	Time Allotted	Responsibility
	1	Submit BASIC Purchaser Details with fees	Varies	Agent
	2	BASIC receives and previews BASIC Purchaser Details	2+ days (if clean)	BASIC
	3	BASIC enters the new business	1+ days	BASIC
	4	Enter employer information and establish account	2 days	BASIC
Kit One	5	BASIC emails employer materials including the Administration Manual	1 day	BASIC
	6	On-Boarding Call	1 day	BASIC
	7	Launch of this year's reporting database	September 1	BASIC
	8	BASIC notifies employers that this tax year's ACA Elevate system is now active	By September 15	BASIC
	9	BASIC sends out new ACA Elevate username and password information to employers	By September 15	BASIC
	10	Employer prepares and submits workbook test file (one-time file)	1 day	Employer
Error Log	11	Employer review error logs on test file and makes the appropriate corrections	1 day	Employer
File Processing	12	Employer submits final file to BASIC to complete the filing	3rd Monday in December-January 13	Employer
	13	Employer reviews the error log, makes the required corrections and resubmits the file for validation	1 day	Employer
	14	Employer finalizes uploaded workbook	1 day	Employer
	15	Once submitted, BASIC will review and generate the final forms for download	5 days	BASIC
	16	Employer downloads and distributes required 1095 Forms to employees	By January 31	Employer
	16a	If <i>1095-C Mailing</i> service was elected, forms will be sent via USPS on the employer's behalf	By January 31	Employer/BASIC
	17	Electronic filing with the IRS	By March 31	BASIC

BASIC ACA Elevate

# ADMINISTRATION MANUAL - APPENDICES



## Applicable Large Employer (ALE) Worksheet Instructions

The ALE Worksheet provides a tool with which to determine and document your ACA reporting status. It is easy to use and requires you to perform some simple calculations as described below. If you determine per the Worksheet that your business is on the cusp, be sure to monitor your status and reporting requirements. To do so, simply update this Worksheet every calendar year. You may download this form from our website.

**Full-Time Employees (FTEs):** The statute defines a full-time employee as one whom, with respect to any month, works at least 30 hours per week. (130 hours of service in a calendar month is considered the monthly equivalent of at least 30 hours of service per week.)

An “employee” is defined under the common-law standard, the same standard used to determine whether someone is a consultant.

The employer-employee relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also regarding the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only regarding what services shall be performed, but also how it shall be performed. In this connection, the employer need not actually direct or control the manner in which the services are performed; it is sufficient if s/he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, individuals are not employees if they are subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result.

Some examples of persons not considered employees: leased employee, a sole proprietor, a partner in a partnership, and a 2% S corporation shareholder. Employees who work outside the U.S. are excluded. Typically, all persons who receive a W-2 are employees.

**Full-Time Equivalent Employees:** FTE-equivalents are included. Include and count part-time employees as a fraction of an FTE with the number of hours regularly scheduled to work over 30, or if monthly the number of hours over 120 scheduled in a month. These part-time employees are added together and become your FTE-equivalents. (Seasonal and Variable Hour employees, if applicable to your work- force, are counted as part-time employees for this calculation.)

**Example.** This employer is an ALE with 50 FTEs: 40 employees are regularly scheduled to work 30 or more hours per week and 20 employees are regularly scheduled to work 15 hours per week or 60 hours per calendar month. Multiplying the hours of the 20 part-time employees (60 hours x 20 part-time employees) = 1200 hours.  $1200 \text{ hours} / 120 = 10$  full time equivalents. This calculation adds 10 FTE-equivalents.  $40 \text{ FTEs} + 10 \text{ FTE-equivalents} = 50 \text{ FTEs}$ .

**Example.** This employer is NOT an ALE with 50 FTEs: 40 employees are regularly scheduled to work 130 or more hours per calendar month and 15 employees are regularly scheduled to work 60 hours per calendar month. Multiplying the hours of the 15 part time employees (60 hours x 15 part time employees) = 900 hours / 120 = 7.5 full time equivalents. This calculation adds 7.5 FTE-equivalents.  $40 \text{ FTEs} + 7.5 \text{ FTE-equivalents} = 47$  total FTEs. (Because the result is not a whole number, it is rounded to the next lowest whole number, so 47 is the result.)

**Hour of Service:** The term hour of service means each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

**Special Unpaid Leave:** The time your FTE is on special unpaid leave is counted towards hours worked. Special Unpaid Leave means the following:

1. Unpaid leave that is subject to the Family & Medical Leave Act of 1993 (FMLA), Public Law 103-3, 29 U.S.C. 2601 et seq.;
2. Unpaid leave that is subject to the Uniformed Services Employment & Reemployment Rights Act of 1994 (USERRA), Public Law 103-353, 38 U.S.C. 4301 et seq.; or
3. Unpaid leave on account of jury duty.

During Special Unpaid Leave the hours of service are added at the rate equal to the average of the prior months during the same calendar year. There is no limit to the number of Hours of Service that can be credited with respect to Special Unpaid Leave.

**Educational Organizations Break In Service:** For an FTE's Break in Service that is not a part of a Special Unpaid Leave, count the months on leave as months worked. For instance, count staff as FTEs during the summer break with the average hour credited. No more than 501 hours of service are required to be credited.

For both Special Unpaid Leave and Educational Organizations Break in Service purposes, you may use any reasonable method to credit hours if applied consistently. If an employee's average rate is being computed for a measurement period that is shorter than six months, use the six-month period ending with the close of the measurement period to compute the average hours of service.

**Seasonal Workers:** The term Seasonal Worker is more technical than Seasonal Employee in regards to tracking ACA hours. A Seasonal Worker is one who performs labor or services on a seasonal basis. Seasonal Employees can be full-time or part-time employees.

Use the following factors to determine whether an employee is a Seasonal Worker:

- The employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. Workers who move from one seasonal activity to another, while employed in agriculture or performing agricultural labor, are employed on a seasonal basis even though they may continue to be employed during a major portion of the year.
- A worker is employed for a limited time only, or his performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely, is not seasonal.

Seasonal Worker does not include the following:

- The employment of any foreman or other supervisory employee who is employed by a specific agricultural employer or agricultural association essentially on a year-round basis.
- The employment of any worker who lives at his/her permanent place of residence on the employer's land, when that worker is employed by a specific agricultural employer or agricultural association on essentially a year-round basis to perform a variety of tasks for the employer and is not primarily employed to do field work.

This includes workers employed exclusively during holiday seasons. Employers may apply a reasonable, good faith interpretation of the term Seasonal Worker.

**Seasonal Workers Relief:** If your FTE count remains under 50 except for a 120-day period (can be counted as four calendar months) in which you employ over 50 individuals as Seasonal Workers, then you are not an ALE. This rule allows you to avoid ALE status when your non-seasonal workforce (including FTEs) is 50 or fewer employees. This exception does not apply if you employ more than 50 individuals for more than four calendar months. The 120-day period (4 month period) does not have to be consecutive.

**Volunteers and Work Study:** Do not count a "Bona fide volunteer" or someone participating in a "Work Study Program."

**Bona Fide Volunteer:** An employee of a government entity or an organization described in Section 501(c) who is exempt from taxation under Section 501(a) whose only compensation from that entity or organization is in the form of—(i) Reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or (ii) Reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.

**Work Study Program:** Do not count any hours for services performed as part of a program that provides part-time employment to students at institutions of higher education.

## ALE Worksheet Calculations

To complete the Worksheet, some simple calculations and sorting functions are necessary. You will need to sort the page for FTEs, part-timers, and seasonal employees, and must add fractions for any part-time employees to determine FTEs.

As mentioned earlier, if you determine per the Worksheet that your business is on the cusp, be sure to monitor your status and reporting requirements. To do so, simply update this Worksheet every calendar year. No matter your determination, we recommend that you complete the Worksheet every calendar year.

## Entering Data

- **Columns A and B:** Enter a line for each employee. Include all classes of employees defined above the ID field is optional for your use in sorting or locating data.
- **Column C:** Enter the hours regularly scheduled to work during the month. Do not enter reductions for Special Unpaid Leaves defined above, approved leaves, vacations, or overtime.
- **Column D:** Enter the status (FTE, Part-Time).
- **Column E:** Enter **Yes** or **No** for Seasonal Employee status.

## Calculations

1. Sort each monthly spreadsheet by the status.
2. Count each FTE once. Seasonal employees who are considered FTEs are counted here. Enter the number of FTEs for each month on the first tab, Line 6, "Count."
3. Add Part-Time Employee hours together for each month; enter total PTE hours for each month on the first tab, Line 12, "Hours."
4. Line 13 will automatically divide the number of PTS hours by 120 to give you the number of FTE-equivalent employees.
5. Line 18, first tab: automatically adds Line 6, your count of FTEs, and Line 13, your FTE-equivalent employees.  
Line 18, Column O, under "Average" will provide you with your average FTE count for ACA reporting purposes.

## Seasonal Relief Rule (if applicable)

1. Sort each month by Column E, "Seasonal Employees."
2. Remove the Seasonal Employees from the FTE count and enter the number of remaining Non-Seasonal FTEs on Line 26 on the first tab.
3. Recalculate the part-time hours by removing seasonal employees. Add non-seasonal part-time hours for each month, and enter them on the first tab for each month, line 32.
4. You are not an ALE if your average on line 38, column O is under 50.
5. You are not an ALE if there are four months in which the FTE count on Line 38 is under 50. The four-month period does not have to be consecutive.

## ACA Veterans

Specifically, an employee is not taken into account for the ALE determination for any month that he or she has medical coverage provided by any of the uniformed services (including TRICARE) or under certain Veterans' Affairs (VA) health care programs. The exemption applies for months beginning after December 31, 2013.

**Exemption for Health Coverage Under Tricare or the Veterans Administration:** Solely for purposes of determining whether an employer is an applicable large employer under this paragraph for any month, an individual shall not be taken into account as an employee for such month if such individual has medical coverage for such month under:

- i. chapter 55 of title 10, United States Code, including coverage under the TRICARE program; or
- ii. under a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary.

## Requirements

- All information needs to be received by January 13 of the following year of the current reporting year so BASIC can meet filing deadlines.
- All data field names on data submitted must be presented exactly as in the data specifications.

## Which Employees are Reported

An ALE must file Form 1095-C for each FTE for each month of the calendar year.

**Self-insured Rule:** In addition, an ALE member who sponsors a self-insured health plan must file Form 1095-C for all covered employees and covered family members, regardless of whether the employee is an FTE for any month of the calendar year.

The statute defines an FTE as one whom, with respect to any month, works at least 30 hours per week (130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week).

**Note:** An “employee” is defined under the common-law standard, the same standard used in determining whether someone is a consultant.

The employer-employee relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only regarding the result to be accomplished by the work but also the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only regarding what shall be done but how it shall be done as well. In this connection, the employer need not actually direct or control the manner in which the services are performed; it is sufficient if he/she has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, an individual is not an employee if he/she is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result.

Some examples of persons not considered employees: leased employee, a sole proprietor, a partner in a partnership, and a 2% S corporation shareholder. Employees who work outside the U.S. are excluded. Typically, all persons who receive a Form W-2 are employees.

**Special Unpaid Leave:** When your FTE is on special unpaid leave the time is counted towards the employee’s hours of service. There are special rules for determining the “average hours” for tracking purposes. For this purpose, count any month in which an employee was out on special unpaid leave as a full-time month.

Special Unpaid Leave means:

1. Unpaid leave that is subject to the Family & Medical Leave Act of 1993 (FMLA), Public Law 103–3, 29 U.S.C. 2601 et seq.; or
2. Unpaid leave that is subject to the Uniformed Services Employment & Reemployment Rights Act of 1994 (USERRA), Public Law 103–353, 38 U.S.C. 4301 et seq.; or
3. Unpaid leave on account of jury duty.



## 4980H Safe Harbor (2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H)

Enter the applicable code below, if any, for a month in which one of the following situations applied to the employee:

- the employee was not employed or was not an FTE;
- the employee enrolled in the MEC offered;
- the employee is in a Limited Non-Assessment Period; and
- any affordability safe harbors with respect to this employee

In some circumstances more than one situation applies to the same employee in the same month. (For example, an employee could be enrolled in health coverage for a particular month in which he/she is not an FTE.) Nevertheless, you may use only one code for a particular calendar month. For any month in which an employee enrolled in MEC, enter Code 2C for reporting enrollment instead of any other code that could also apply. For an employee who did not enroll in health coverage, specific ordering rules provided below. Remember, these codes excuse you from a 4980H(b) Penalty.

**2A.** Employee not employed during the month. Enter Code 2A if the employee was not employed on any day of the calendar month. Do not use Code 2A for any month in which the individual was an employee on any day of that calendar month. Do not use Code 2A for any month in which an employee terminates employment with the employer.

**2B.** Employee not an FTE. Enter Code 2B if the employee is not an FTE for the month and did not enroll in minimum essential coverage, if offered for the month.

Also enter Code 2B if the employee is an FTE for the month and his/her offer of coverage (or coverage if the employee was enrolled) ended before the last day of the month solely because the employee terminated employment during the month. (In sum, the offer of coverage or actual coverage would have continued if the employee had not terminated employment during the month.)

**2C.** Employee enrolled in coverage offered. Enter Code **2C** for any month in which the employee enrolled in health coverage offered by the employer, regardless of whether any other code in Code Series 2 might also apply. This is the most common code used for ongoing FTES who remain covered under your Plan.

**2D.** Enter Code 2D for an employee in a Limited Non-Assessment Period. The “Limited Non-Assessment Periods” to consider:

- 1) An employer’s first year as an ALE, see the Manual, “Are you a New ALE?” content for details on the transition relief and whether you qualify to enter this code for any month.
- 2) An employer who uses the Monthly Measurement Period uses Code 2D for the first three full calendar months following the first month an employee becomes eligible for an offer of MV affordable coverage. This applies only to the first time an employee is eligible for an offer of coverage during his/her employment.

- 3) For a new FTE (not a seasonal employee), if you use the Look Back Measurement Period enter Code 2D for the three-month period beginning with the first day of the first full calendar month of employment if, for the calendar month in which the employee is otherwise eligible for an offer of coverage under your group health plan, and the employee will be offered coverage no later than the first day of the fourth full calendar month of employment if the employee is still employed on that day. This is the most common code entered for an FTE who is in a Plan's waiting period.
- 4) Employees determined to be employed on average at least 30 hours of service per week. Use Code 2D with respect to a new variable hour, new seasonal, or new part-time employee who has averaged at least 30 hours per week during any month that falls within his/her initial measurement period, and the initial administrative period, provided that the employee is offered MV affordable coverage no later than the first day of the associated stability period if the employee is still employed on that day.
- 5) Change in employment status during the initial measurement period. Enter Code 2D when a new variable hour, new seasonal, or new part-time employee experiences a change in employment status to become an FTE before the end of the initial measurement period. Enter the code for any month before the fourth full calendar month following the change in employment status.
- 6) Use Code 2D for any month in which coverage was not provided the entire month because the employee's start and/or termination of employment date is not the first day of the month.

**Note:** If an employee is in an initial measurement period, enter Code 2D (employee in a Limited Non-Assessment Period) for the month, and not Code 2B (employee not an FTE).

**2E.** Enter Code 2E for any month in which an FTE is covered under a group health plan required by a collectively bargained agreement or appropriate related participation agreement, when you as the employer make a contribution to the coverage on behalf of the FTE. By entering this code, your contribution to the coverage will be considered an "offer" under the ACA.

**2F.** Section 4980H Affordability Form W-2 Safe Harbor. Enter Code 2F if you used the W-2 Safe Harbor to determine affordability.

See the Manual, "Is your Plan Affordable?" content for detail regarding this requirement and the safe harbors available.

**2G.** Section 4980H Affordability Federal Poverty Line Safe Harbor. Enter Code 2G if you used the Section 4980H Federal Poverty Line Safe Harbor to determine affordability. See the Manual, "Is your Plan Affordable?" content for detail regarding this requirement and the safe harbors available.

**2H.** Section 4980H Affordability Rate of Pay Safe Harbor. Enter Code 2H if you used the Rate of Pay Safe Harbor to determine affordability. See the Manual, "Is your Plan Affordable?" content for detail regarding this requirement and the safe harbors available.

**Note:** 2F, 2G, or 2H will be codes used if Employee waives offer of coverage. You would choose the Safe Harbor you used to determine affordability of employee-only premium. If premium is not affordable, you would leave blank.

## Offer of Coverage Codes (1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1J, 1K, 1L, 1M, 1N, 1O, 1P, 1Q, 1R, 1S, 1T, 1U)

Use the Offer of Coverage Codes to report whether an offer of coverage was made to an employee for each month of the year, and if so what type of coverage was provided. An Offer of Coverage is considered to have been made for a month only if the coverage would be provided for every day of that month.

Enter the appropriate code for each employee for each monthly submission.

**1A.** Qualifying Offer: Minimum essential coverage providing minimum value offered to FTE with employee contribution for self-only coverage equal to or less than 8.39% mainland single federal poverty line and at least minimum essential coverage offered to spouse and dependent(s).

**1B.** Minimum essential coverage providing minimum value offered to employee only.

**1C.** Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) (not spouse).

**1D.** Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to spouse (not dependent(s)).

**1E.** Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage offered to dependent(s) and spouse.

**1F.** Minimum essential coverage NOT providing minimum value offered to employee, or employee and spouse or dependent(s), or employee, spouse and dependents.

**1G.** Offer of coverage to employee who was not an FTE for any month of the calendar year and who enrolled in self-insured coverage for one or more months of the calendar year. An employer who sponsors a self-insured health plan may report enrollment information for individuals who were not employees on any day of the calendar year by entering Code 1G for all twelve months. Such individuals might include a non-employee director, a terminated employee receiving COBRA coverage who terminated employment in a previous calendar year, a retired employee who terminated employment in a previous calendar year, or a family member (including a surviving spouse or dependent) of such an individual if the family member is receiving coverage independent of the individual, such as a surviving spouse of a retiree who is enrolled in the Plan because the retiree elected self plus spousal coverage.

**1H.** No offer of coverage (employee not offered any health coverage or employee offered coverage that is not minimum essential coverage). For the first month of employment, report that the employee was not offered coverage for that first month by entering Code 1H (unless the offer of coverage extended to every day of that month). For example, a newly-hired employee starts employment on the 10th day of a calendar month, and accepts the offer of coverage, to begin on the 10th day of the next calendar month; you must indicate that the employee was not offered coverage for that first month.

If an employee terminates employment on any day other than the last day of a month and the coverage or offer of coverage expires upon termination of employment, enter Code 1H to report that the employee was not offered coverage for that final month of employment.



# IRS Reporting Data Coding

- 1J.** Minimum essential coverage providing minimum value offered to employee and at least minimum essential coverage conditionally offered to spouse; minimum essential coverage not offered to dependent(s). A conditional offer is an offer of coverage that is subject to one or more reasonable, objective conditions (for example, an offer to cover an employee's spouse only if the spouse is not eligible for coverage under Medicare or a group health plan sponsored by another employer).
- 1K.** Minimum essential coverage providing minimum value offered to employee; at least minimum essential coverage offered to dependents; and at least minimum essential coverage conditionally offered to spouse. A conditional offer is an offer of coverage that is subject to one or more reasonable, objective conditions (for example, an offer to cover an employee's spouse only if the spouse is not eligible for coverage under Medicare or a group health plan sponsored by another employer.)
- 1L.** Individual coverage health reimbursement arrangement (HRA) offered to you only with affordability determined by using employee's primary residence location ZIP Code.
- 1M.** Individual coverage HRA offered to you and dependent(s) (not spouse) with affordability determined by using employee's primary residence location ZIP Code.
- 1N.** Individual coverage HRA offered to you, spouse and dependent(s) with affordability determined by using employee's primary residence location ZIP Code.
- 1O.** Individual coverage HRA offered to you only using the employee's primary employment site ZIP Code affordability safe harbor.
- 1P.** Individual coverage HRA offered to you and dependent(s) (not spouse) using the employee's primary employment site ZIP Code affordability safe harbor.
- 1Q.** Individual coverage HRA offered to you, spouse and dependent(s) using the employee's primary employment site ZIP Code affordability safe harbor.
- 1R.** Individual coverage HRA that is NOT affordable offered to you; employee and spouse or dependent(s); or employee, spouse, and dependents.
- 1S.** Individual coverage HRA offered to an individual who was not a full-time employee.
- 1T.** Individual coverage HRA offered to employee and spouse (no dependents) with affordability determined using employee's primary residence location and zip code.
- 1U.** Individual coverage HRA offered to employee and spouse (no dependents) using employee's primary employment site.

## Self-Funded Only

In order for BASIC to report covered dependents to the IRS, you will need to include the Social Security Number for each dependent. If not available you can use their date of birth.

## General Rules That are Applicable to COBRA Participants

ACA mandates that an ALE must offer Minimum Essential Coverage to FTEs and their dependents that is both affordable and of minimum value in order to avoid penalties. The ALE reports such information to both the IRS and the employee. Forms used for this purpose are the 1094-C and 1095-C. Employers are only responsible for ACA penalties related to coverage for FTEs and FTE's dependents. Since the employee who is now a COBRA participant is either terminated or part time there is no possibility for an Employer ACA penalty.

The Employer Mandate reporting instructions for form 1095-C (Part II) requires the Employer to enter an Offer of Coverage code and a 4980H Safe Harbor code for each month of the year, even the months after termination of employment. These data fields are not associated with any chance of penalties, they are merely fillers required by IRS.

In addition, under ACA there is an Individual Mandate requiring individuals to maintain MEC coverage throughout the calendar year. In general reporting for the Individual Mandate is the responsibility of the entity issuing the coverage.

- For insured plans that is the insurance company, HMO, who send the covered person a Form 1095-B.
- For self-funded plans that is the Employer. An ALE will typically fulfill this requirement by including this information on Form 1095-C in Part III. This is in lieu of issuing a 1095-B form.

## Insured Plans

For the Employer Mandate reporting on Form 1095-C (Part II), please note the following:

### Termination Of Employment

- The Codes sent for the month following the loss of coverage through the end of the calendar year:
  - » Report 1H (Offer of Coverage Code), no premium reported for the lowest cost self only coverage (Employee Share), and 2A (Safe Harbor Code) regardless of whether COBRA coverage is elected.
  - » Please note, the individual would not be reported in subsequent calendar years.

### Reduction in Hours

- The Codes sent for the month of the loss of coverage through the end of the calendar year.

**Example.** During open enrollment period for its health plan, Employer makes an offer of qualifying coverage to Employee and to their spouse and dependents. Employee elects to enroll in employee-only coverage starting Jan 1. On June 1, Employee experiences a reduction in hours that results in loss of eligibility for coverage under the plan. As of June 1, Employer terminates Employee's existing coverage and makes an offer of COBRA continuation coverage to Employee, but does not make an offer to Employee's spouse and dependents. Employer should enter Offer of Coverage Code 1B (qualifying coverage offered to employee only) for months June – December. The Employee Share should be listed as lowest monthly employee-only cost of COBRA coverage. The Safe Harbor Code should be 2C if Employee enrolled in COBRA coverage, or 2B if Employee did not enroll. (The individual would not be reported in subsequent calendar years.)

Employers with insured plans rely on the carrier to send the employee a 1095-B (to fulfill the Individual Mandate reporting requirement).

## Self-Funded Employers

For the Employer Mandate reporting on Form 1095-C (Part II), please note the following:

### Termination of Employment

- The Codes sent for the month following the loss of coverage through the end of the calendar year:
  - » Report 1H (Offer of Coverage Code), no Employee Share, and 2A (Safe Harbor Code) regardless of whether COBRA coverage is elected.
  - » If the terminated employee did not enroll in COBRA, but the spouse or dependents enrolled independently they would be reported on their own report line using 1G (Offer of Coverage Code) for each month covered, no Employee Share, and no Safe Harbor Code. This coding is done as these enrolled individuals must still be reported for the Individual Mandate.
- Please note that for the next calendar year report only those terminated employees who enrolled in COBRA coverage using 1G (Offer of Coverage Code) for each month covered, no Employee Share, and no Safe Harbor Code.
  - » This coding is done as the enrolled COBRA participant and any spouse or dependent under their coverage must still be reported for the Individual Mandate.
  - » Those who did not enroll in COBRA coverage are dropped from reporting.
  - » If the terminated employee did not enroll in COBRA, but the spouse or dependents enrolled independently they would be reported on their own report line using 1G (Offer of Coverage Code) for each month covered, no Employee Share, and no Safe Harbor. Code This coding is done as enrolled individuals must still be reported for the Individual Mandate.

### Reduction in Hours (Self Funded)

- The Codes sent for the month of the loss of coverage through the end of the calendar year:

**Example.** During open enrollment period for its health plan, Employer makes an offer of qualifying coverage to Employee and to Employee's spouse and dependents. Employee elects to enroll in employee-only coverage starting January 1. On June 1, Employee experiences a reduction in hours that results in loss of eligibility for coverage under the plan. As of June 1, Employer terminates Employee's existing coverage and makes an offer of COBRA continuation coverage to Employee, but does not make an offer to Employee's spouse and dependents. Employer should enter Offer of Coverage Code 1B (qualifying coverage offered to employee only) for months June – December. The Employee Share should be listed as lowest monthly employee-only cost of COBRA coverage. The Safe Harbor Code should be 2C, if employee enrolled in COBRA coverage, or 2B, if employee did not enroll.

- Please note that for the next calendar year report only those reduced hour employees who enrolled in COBRA coverage using 1G (Offer of Coverage Code) for each month covered, no Employee Share, and no Safe Harbor Code.
  - » This coding is done as enrolled COBRA participants and any spouse or dependent under their coverage must still be reported for the Individual Mandate.
  - » Those who did not enroll in COBRA coverage are dropped from reporting.
  - » If the terminated employee did not enroll in COBRA, but the spouse or dependents enrolled independently they would be reported on their own report line using 1G (Offer of Coverage Code) for each month covered, no Employee Share, and no Safe Harbor Code. This coding is done as enrolled individuals must still be reported for the Individual Mandate.

## Employees in a Limited Non-Assessment Period

For employees in waiting periods who never advanced out of said period:

- No Form 1095-C need be produced and/or filed (employee need not receive Form 1095-C).
- On Form 1094-C these individuals must be counted and included.

IRS guidance offers the following tip: “An employer need not file a Form 1095-C for an individual who for each month of a calendar year is either not an employee of the employer or is an employee in a Limited Non-Assessment Period. However, for the months in which the employee was an employee of the employer, such an employee would be included in the total employee count reported on Form 1094-C, Part III, Column (c). Also, if during the Limited Non-Assessment Period the employee enrolled in coverage under a self-insured employer-sponsored plan, the employer must file a Form 1095-C for the employee to report coverage information for the year.”

## Health Reimbursement Accounts (HRAs)

Employers with Health Reimbursement Accounts that are integrated with a fully-insured group health plan are not required to report the HRA coverage. It had already been established that an employer with an HRA integrated with a self-insured group health plan is not required to report that HRA coverage.

An employer with an HRA must report coverage under the HRA for any individual who is not enrolled in a group health plan of the employer. For example, if the individual is enrolled in a group health plan of another employer (such as spousal coverage) or in an individual health plan (such as exchange coverage).

