

## Recent Increase in IRS Enforcement of ACA Reporting Penalties

Recently, the IRS has intensified enforcement of information reporting compliance under the Affordable Care Act (ACA). Information reporting penalties apply in addition to any penalties assessed for failures to meet the employer shared responsibility provisions, known as the employer mandate. Although the IRS has regularly enforced failure-to-file penalties since the law's enactment, employers subject to the ACA and related information reporting requirements have just recently begun receiving notices of late filing penalties for the 2017 reports submitted. Employers should be aware that the IRS is signaling stepped-up enforcement of ACA compliance for 2017 and subsequent tax years.

### ACA Information Reporting for Employers

Beginning for the 2015 tax year, the ACA imposed information reporting requirements on "applicable large employers," or ALEs. Generally, an employer with at least 50 full-time employees (including full-time equivalent employees) during the prior year will be considered an ALE for the current year. An ALE must offer qualifying health coverage to full-time employees and their dependents to avoid potential assessment under the employer mandate. To satisfy the reporting requirements, the employer sends information on its offer of coverage on [Form 1094-C](#) and [Form 1095-C](#) to the IRS, as well as furnishes the Form 1095-C to each reportable employee.

Failure to comply with the ACA information reporting requirements can result in penalties imposed under the general reporting penalty provisions of Internal Revenue Code section 6721 and section 6722. These reporting penalties, along with any additional payments assessed under the employer mandate, may present a significant liability for a non-compliant employer subject to the ACA. However, a waiver of penalty, including abatement of information return penalties for reasonable cause, may be available for certain failures.

### Increased IRS Scrutiny

Despite the effective repeal of the individual mandate penalty, the employer obligations and related penalties under the ACA remain in full force. A [bipartisan bill](#) introduced on July 31, 2019



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proposes relief for the administrative burden on employers reporting under the ACA. However, there has been no indication that the IRS will substantially change ACA compliance procedures currently in place, absent further legislation. In fact, employers are now experiencing increased IRS scrutiny on ACA compliance.

For the 2015 and 2016 tax years, the IRS focused its enforcement of the ACA against non-filers, the employers that the agency claimed did not submit the required Forms 1094-C and Forms 1095-C. However, employers have only recently begun receiving IRS penalty notices for late filing of the ACA information reports for the 2017 tax year. If subject to ACA reporting, an employer must comply by the deadline or risk the increasingly prevalent IRS enforcement of late filing penalties.

Based on the ACA information reports filed, the IRS began issuing notices for the employer mandate penalties at the end of 2017, beginning with the 2015 tax year. Since then, the IRS has moved to issuing these notices up to the 2017 tax year in recent months. IRS treatment of ACA compliance has reportedly grown stricter on recent notices, with more follow-up inquiries on corrected reporting errors and fewer routine grants of 90-day extensions to respond.

## Conclusion

In addition to the employer mandate, timely compliance with annual ACA information reporting is still required under the law. Given recent IRS activity, employers covered under the ACA may increasingly face penalties in this area. These companies should seek professional assistance to respond to IRS notices and request penalty abatement, to the extent available.

For questions about ACA compliance or related penalties, please contact [Nancy Dollar](#), [Christopher Karachale](#) or a member of the [Hanson Bridgett Employee Benefits Group](#).

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