

Updated: 3-2015. Disclaimer: The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.



Eligibility  
Tracking  
Calculators

# ACA

## – It's All About the Numbers



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# WHAT is ObamaCare?

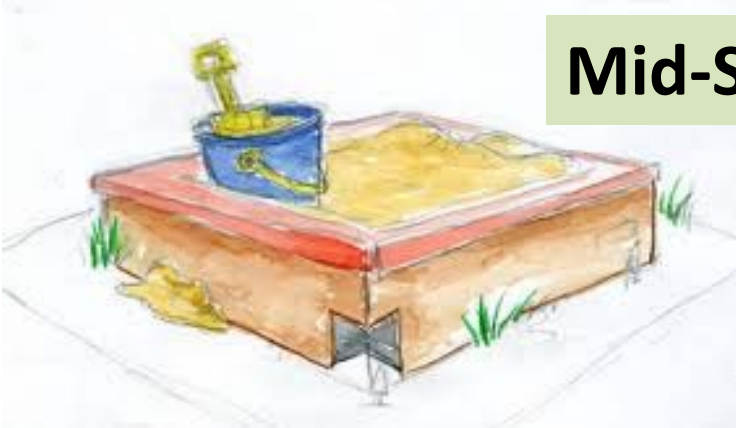
ObamaCare (AKA The [Affordable Care Act](#)) is a US law aimed at reforming the American [health care](#) system. ObamaCare's main focus is on providing more Americans with access to affordable [health insurance](#) improving the quality of health care and health insurance, regulating the health insurance industry, and reducing health care spending in the US.

# What makes and ACA Compliant Healthplan today

- **2015 - Out of Pocket Maximums capped at \$6,600 for individuals (\$13,200 for families)**
- **Guaranteed Eligibility for ALL individuals – No Pre-Existing Condition Limitations**
- **Preventative Care must be covered 100%**
- **No lifetime or annual limits in 2014**
- **Stand Alone HRAs are GONE.**
- **Maximum Wait period – 90 calendar days in 2014 upon plan year renewal.**

# Which Sandbox Are You In?

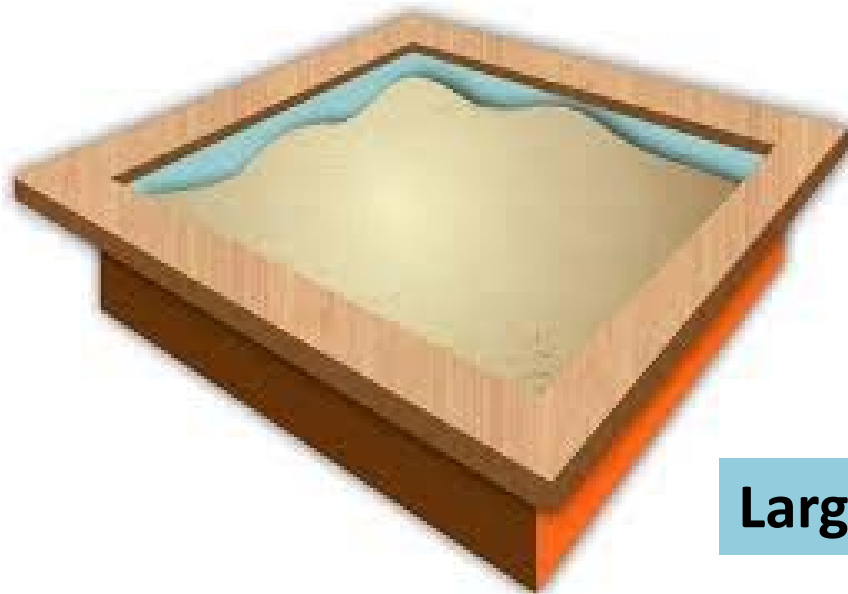
Mid-Size ALE?



Small group?



Large ALE?



# Who are we counting?

**Everyone in some fashion!!**

- ❖ **Not just belly buttons**
- ❖ **FTE Formula – previous year for this year Size**
- ❖ **Full-Time (30+ week; 130 hours a month); Part-Time (<30 week)**
- ❖ **Variable Hour (an ee who, based on facts and circumstances at the start date/first assignment, it cannot be determined that the ee is reasonably expected to work at least 30 hrs per week.)**
- ❖ **Calculation is based on entire workforce and includes “control group” *IRS Sec. 414(b), (c), (m), or (o).***

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# Who has to “Pay or Play”?

Applicable Large Employers “ALEs” are those with 50 or more FTEs and have to offer Affordable and Minimum Value healthcare to all Eligible Full-Time Employees.

Employers with fewer than 50 FTEs are Small Group Employers and are NOT mandated to offer coverage.

Formula:  $FT (30 \text{ hrs+ a wk}) + (\text{Total part-time hours worked in a month}/120) = FTE \text{ (Full-Time Equivalents)}$

Example:  $93 \text{ FTs} + (960 \text{ hrs}/120 = 8) = 101$

**\*\*RUN FORMULA FOR 6 Consecutive Months in 2014.**

**For 2015, only ALEs with 100+ FTEs are required to offer coverage. Those ALEs with between 50 and 99 FTEs must certify numbers.**

# When Do ALEs have to Comply with ACA

Generally, January 1, 2015 unless .....

**New ALE did not know if over or under 100 FTEs so performed 6 month calculation for last 6 months of 2014 – then does not have to offer ACA compliant plan to all eligible until 4-1-15.**

**Mid-Size ALE – no need to comply until 2016 as long as.....**



# Mid-Size ALEs 2015

**(1) Limited Workforce Size.** The employer must employ on average at least 50 full-time employees (including full-time equivalents) but fewer than 100 full-time employees (including full-time equivalents) on business days during 2014.

**(2) Maintenance of Workforce and Aggregate Hours of Service.** During the period beginning on Feb. 9, 2014 and ending on Dec. 31, 2014, the employer may not reduce the size of its workforce or the overall hours of service of its employees in order to qualify for the transition relief. However, an employer that reduces workforce size or overall hours of service for bona fide business reasons is still eligible for the relief.

**Maintenance of Previously Offered Health Coverage.** During the period beginning on Feb. 9, 2014 and ending on Dec. 31, 2015 (or, for employers with non-calendar-year plans, ending on the last day of the 2015 plan year) the employer does not eliminate or materially reduce the health coverage, if any, it offered as of Feb. 9, 2014.

**Certify this information using Form 6056.**

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# When Do ALEs have to Comply with ACA

Generally, January 1, 2015 unless .....

**New ALE did not know if over or under 100 FTEs so performed 6 month calculation for last 6 months of 2014 – then does not have to offer ACA compliant plan to all eligible until 4-1-15.**

**Mid-Size ALE – no need to comply until 2016 as long as.....**

**Plan year starts sometime other than January 1.....**

# Large ALE (100+ FTEs in 2014) - Compliance in 2015, when?

If on 12-27-12, had a fiscal year plan....

Fiscal Date  
hasn't changed

Offered coverage to at least 1/3 of ALL employees or 1/4 of ALL Employees on coverage as of last OE before 12-27-12.....

OR

Changed  
fiscal  
plan year  
After  
12-27-12

Have to offer coverage to comply with ACA on January 1, 2015.

Offered coverage to at least 1/2 of Full-Time Employees or at least 1/3 of all FT employees on Plan as of last OE before 2-9-14.

Compliance at beginning of Fiscal Plan year in 2015.

# **Small Group Employer Obligations and Options Fewer than 50 FTEs for 2015.**

Updated: 3-2015. Disclaimer: The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.

# Insured Small Group Requirements

- Essential Health Benefits (not Self-Insured Plans)

- Ambulatory Patient Services

- Emergency Services

- Maternity & Newborn Care

- Pediatric Services

- Prescription Drugs

- Laboratory Services

- Mental Health & Substance Use Disorder

- Preventive & Wellness Services

- Chronic Disease Management

- Hospitalization

- Rehabilitative/Habilitative Services & Devices (devices tax)

# Insured Small Group Requirements

Guarantee Issue and No Medical Underwriting

## 3:1 Modified Community Rating

1. Age
2. Community
3. Smoking (5:1)
4. Family Size

Potential Liability – be careful that you have a justifiable business reason for hiring someone younger aside from ACA.

# Employer Payment Plans

Notice 2013-54 and 2015-17

**General Rule: Employers CANNOT pay premiums or reimburse premiums for individual employee policies but.....**

**Small employers can continue this practice until June 30, 2015 .**



**Thereafter \$100 a day excise tax per employee**

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# **Large Group Employer Obligations and Options**

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# Large ALE's Failure to Offer Coverage

## Sec. 4890H(a) Penalties "Sledgehammer Penalties" for 2015 only

Does ALE offer coverage to "substantially all" eligible employees?

Substantially all = 95% of eligible EEs  
(2015 = 70%)

No

Eligible EE seeks coverage through Marketplace and receives premium tax credits.

CAUTION: Employer still potentially subject to **other** fines and penalties for the 30% not offered coverage\*\*

yes

No 4980h(a) penalty payment owed by employer.

Employer must pay \$2,000 per annum for all eligible EEs (minus 30) regardless of whether Eligible EEs have coverage.

(2015 only Minus 80)

\*\*Please see 3-1-14 ETC Newsletter for more on the other penalties.

Updated: 3-2015. Disclaimer: The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.

# SLEDGEHAMMER PENALTY

**Example: 93 FTs + (960 hrs/120 = 8) = 101 = ALE**

**Penalty:**

**93 FTs – 80 FTs = 13 X \$2,000 = \$26,000**

**Or we cannot prove we offered coverage to 150 employees.....**

**Example:**

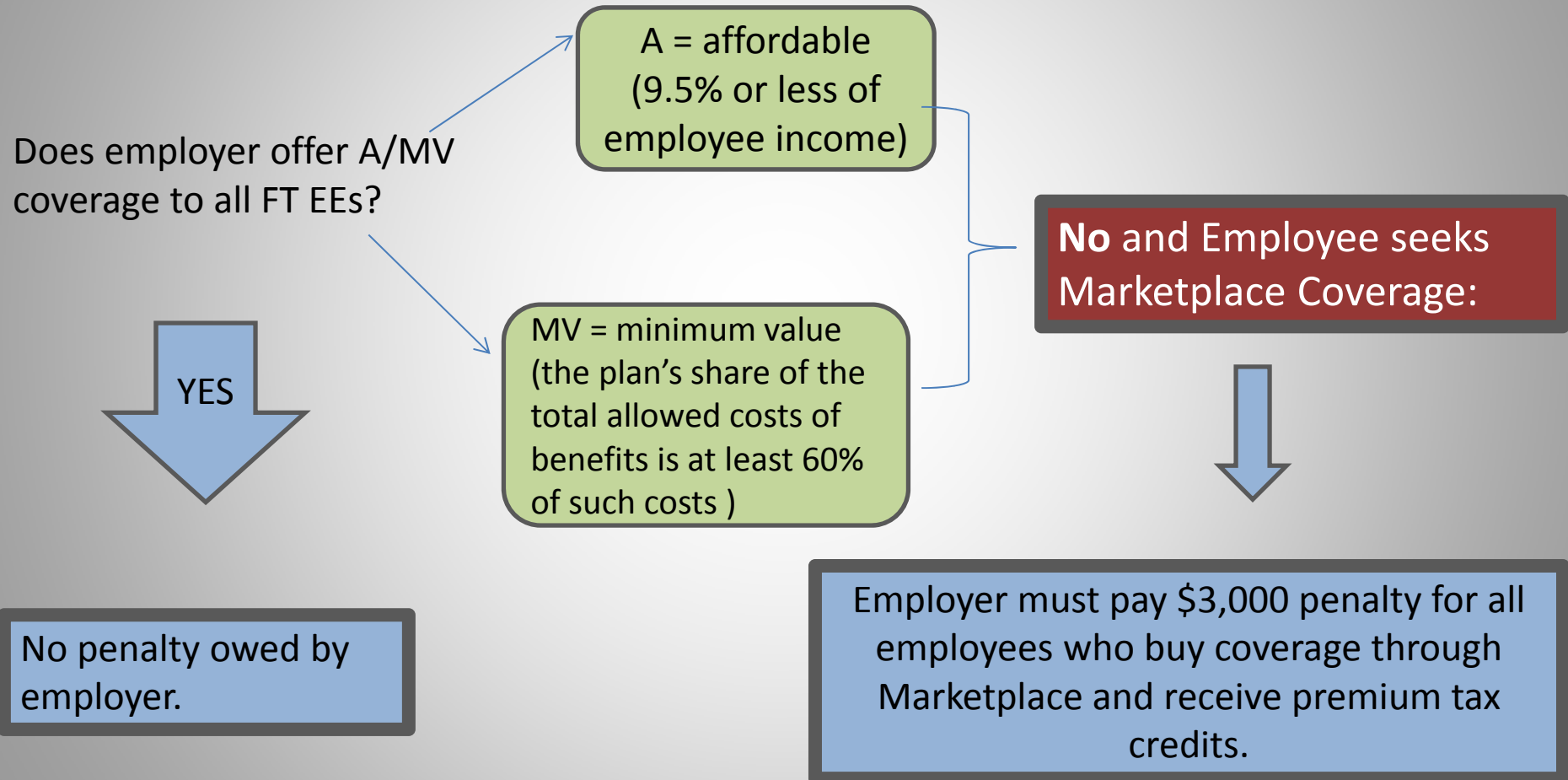
**500 FTs and WE FORGET TO OFFER COVERAGE TO 150 FTs. BUT 350 FTs are on plan.**

**Penalty:**

**500 FTs – 80 FTs = 420 X \$2,000 = \$840,000**

# A/MV Failures and Penalties

## Sec. 4890H(b) Penalties “TackHammer Penalties”



# **Let's talk about the Section 1411 Certification.....**

**What is it and what does it mean to you??**

TIME WELL SPENT™

by Tom Fishburne

LA LA LA LA LA

SOONER OR  
LATER, WE'RE  
GOING TO  
HAVE TO START  
PLANNING  
FOR PPACA  
COMPLIANCE.

WORKFACES

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workfaces.com

## ADDITIONAL LEGAL CHALLENGES

*Updated: 11-2014. Disclaimer: The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.*

# More on Employer Payment Plans

Notice 2015-17: **What CAN an employer pay for an individual plan?**

1. Small groups until June 30, 2015.
2. S Corp can pay for shareholder (2%+)
3. Medicare Premium Reimbursements **BUT THERE ARE REQUIREMENTS TO MEET....**
4. Tricare - HRAs

**Penalty if out of compliance: \$100 a day per affected employee - \$36,500 per year**

Updated 3-2018. Disclaimer: The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or

# How do we avoid potential fines/penalties?

- Identify persons eligible for benefits.
- Offer benefits when owed.
- Keep accurate records of to whom you offer benefits and when.
- Maintain historical data to prove you did what was required of you when required.
- Be prepared to file your Form 6056 reports and provide the Employee Notice in early 2016.



*Updated: 11-2014. Disclaimer: The materials and information contained herein are intended only to provide information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.*



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# What is going on with EBSA and who are they anyway?



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# Employee Benefits Security Administration

- Responsible for ensuring compliance by both **Retirement Plans** and **Health & Welfare Plans**
  - No misuse of funds
  - Compliance with ERISA
  - Compliance with ACA

Department of Health & Human Services (HHS) reimburses EBSA for H&W Plan Audits so.....

# DOL EBSA Audits

- Plan Compliance Audits
  - Large Group (Grandfathered; fully insured)
  - Small Group (Tax credits; no 5500 filing)
- The DOL has estimated that three out of four plans they audit have an ERISA violation.

## **Take away:**

**We need to audit Client SPDs, plan documents, and wrap documents NOW to ensure compliance.**

# SPD – what is it and what has to be in it?

- SPD (Summary Plan Description) is primary vehicle for communicating Plan rights and obligations to Participants and Beneficiaries.
- Generally -summary of the material provisions of the Plan Document written so the average participant can **understand** it.
- Can be a compilation of several documents including a Certificate of Coverage, plan booklets, required ERISA Disclosure Notices, etc.

# What has to be included in a Summary Plan Description?

- Requirements Found in **CFR § 2520.102-3**
- **An SPD must contain all of the following information:**
  - The Plan name
  - The Plan Sponsor/employer's name and address
  - The Plan Sponsor's EIN
  - The Plan Administrator's name, address, and phone number

# And.....

- Designation of any Named Fiduciaries, if other than the Plan Administrator, e.g., Claim Fiduciary
- The Plan number for ERISA Form 5500 purposes, e.g., 501, 502, 503, etc. (Note—each ERISA Plan should be assigned a unique number that is not used more than once.)
- Type of Plan or brief description of benefits, e.g., life, medical, dental, disability
- The date of the end of the Plan Year for maintaining Plan's fiscal records (which may be different than the insurance policy year)
- Each Trustee's name, title, and address of principal place of business, if the Plan has a Trust
- The name and address of the Plan's agent for service of legal process, along with a statement that service may be made on a Plan Trustee or Administrator
- The type of Plan administration, e.g., administered by contract, insurer, or Sponsor
- Eligibility terms, e.g., classes of eligible employees, employment waiting period, and hours per week, and the effective date of participation, e.g., next day or first of month following satisfaction of eligibility waiting period
- How insurer refunds (e.g., dividends, demutualization) are allocated to Participants.  
**Note: This is important to obtain the small Plan (<100 Participants) exception for filing Form 5500.**
- Plan Sponsor's amendment and termination rights and procedures, and what happens to Plan assets, if any, in the event of Plan Termination.

# And.....

- Summary of any Plan provisions governing the benefits, rights, and obligations of Participants under the Plan on termination or amendment of Plan or elimination of benefits
- Summary of any Plan provisions governing the allocation and disposition of assets upon Plan termination
- Claims procedures—may be furnished separately in a Certificate of Coverage, provided that the SPD explains that claims procedures are furnished automatically, without charge, in the separate document (e.g., a Certificate of Coverage), and time limits for lawsuits, if the Plan imposes them.
- A statement clearly identifying circumstances that may result in loss or denial of benefits (e.g., subrogation, Coordination of Benefits, and offset provisions)
- The standard of review for benefit decisions (We recommend consideration of granting full discretion for Plan Administrator or authorized Fiduciary to interpret Plan and make factual determinations)
- ERISA model statement of Participants' rights
- The sources of Plan contributions, whether from employer and/or employee contributions, and the method by which they are calculated
- Interim SMMs since SPD was adopted or last restated
- The fact that the employer is a participating employer or a member of a controlled group
- Whether the Plan is maintained pursuant to one or more collective bargaining agreements, and that a copy of the agreement may be obtained upon request

# And.....

- A prominent offer of assistance in a non-English language (depending on the number of participants who are literate in the same non-English language)
- Identity of insurer(s), if any
- Additional requirements for Group Health Plan SPDs:
  - Detailed description of Plan provisions and exclusions (e.g., copays, deductibles, coinsurance, eligible expenses, network provider provisions, prior authorization and utilization review requirements, dollar limits, day limits, visit limits, and the extent to which new drugs, preventive care, and medical tests and devices are covered) A link to network providers should also be provided. Plan limits, exceptions, and restrictions must be conspicuous.
  - Information regarding COBRA, HIPAA, and other federal mandates such as Women's Health Cancer Rights Act, preexisting condition exclusion, special enrollment rules, mental health parity, coverage for adopted children, Qualified Medical Support Orders, and minimum hospital stays following childbirth.
  - Name and address of health insurer(s), if any
  - Description of the role of health insurers (i.e., whether the Plan is insured by an insurance company or the insurance company is merely providing administrative services.

# Distribution of the SPD

- Every 5 Years
- Within 30 days of written request
- Use of the Summary of Material Modifications

## Methods of Distribution:

- Paper
- Electronic





# ERISA Notices by Client Size

## <50

### 2-49 Employees

- SPD
- SMM and Summary Material Reduction in Covered Services
- Plan Documents
- Health Insurance Exchange Notice
- SBC
- Notice of Modification
- Disclosure of Grandfather Status
- Notice of Patient Protections
- Patient-Centered Outcomes Research (PCORI)
- Notice of Special Enrollment Rights
- Wellness Program Disclosure
- Notice of Privacy Practices
- WHCRA
- Mental Health
- CHIP
- Michelle's Law
- Newborns and Mothers Protections
- Medicare Part D

### 20-49 Employees

- General Notice of COBRA
- Notice of COBRA QE
- COBRA election notice
- Notice of unavailability of COBRA
- Notice of Underpayment of COBRA
- Notice of Early Termination of COBRA Coverage

# ERISA Notices by Client Size

## 50+

### 50+ Employees

- SPD
- SMM and Summary Material Reduction in Covered Services
- Plan Documents
- Health Insurance Exchange Notice
- SBC
- Notice of Modification
- Disclosure of Grandfather Status
- Notice of Patient Protections
- Patient-Centered Outcomes Research (PCORI)
- Notice of Special Enrollment Rights
- Wellness Program Disclosure
- Notice of Privacy Practices
- WHCRA
- Mental Health
- CHIP
- Michelle's Law
- Newborns and Mothers Protections
- Medicare Part D

### 20+ Employees

- **General Notice of COBRA**
- Notice of COBRA QE
- COBRA election notice
- Notice of unavailability of COBRA
- Notice of Underpayment of COBRA
- Notice of Early Termination of COBRA Coverage

### 50+ Employees

- FMLA Notice
- Notice of FMLA Eligibility Rights
- FMLA Designation Notice
- 

### 100+ Participants

- Form 5500
- SAR

# Notices & Requirements

All **employers**, regardless of employee count, are required to provide employees with annual notices regarding their rights as they relate to benefits throughout the year. In addition to providing notices to employees, some states are requiring employers to provide proof that notices are delivered to employees throughout the year.

*42 Notices in 2014 / 52 Notices in 2015, based on IRS and DOL recommendations*

## ERISA- 7 Parts of ERISA

Part 1: Reporting and Disclosure

Part 4: Fiduciary Responsibilities

Part 5: Administration and Enforcement

Part 6: COBRA

Part 7: Group Health Requirements

## Mandated Coverage

QMCSO

Dependents

Mental Health

Financial Accounting

Standards Board (FASB) Requirement

Statement 106

Statement 112

Statement 158

## Other Federal Laws

Medicare Part D etc.

8 others

Employment Law Affecting

Group Health Plans

7 items

Key State Regulations

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# 1094c/1095c Reporting



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# Small Employers

No Health  
Plan

**No  
Reporting**

Fully-  
Insured  
Plan

**No  
Reporting**

Self-  
Insured

**File 1095-  
B only**

# 50-99 FTEs Employers

No Health  
Plan

File 1095-C  
parts I and II

Fully-  
Insured Plan

File 1095-C  
Parts I and II  
(insurer files  
1095-B)

Self-Insured

File 1095-C  
Parts I, II  
and III

# Applicable Large Employers (100+)

No Health Plan

File 1095-C parts I and II

Fully-Insured Plan

File 1095-C Parts I and II (insurer files 1095-B)

Self-Insured

File 1095-C Parts I, II and III



Form **1094-C**

Department of the Treasury  
Internal Revenue Service

# Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

► Information about Form 1094-C and its separate instructions is at [www.irs.gov/1094c](http://www.irs.gov/1094c).

CORRECTED

120115  
OMB No. 1545-2251

**2014**

## Part I Applicable Large Employer Member (ALE Member)

1 Name of ALE Member (Employer)		2 Employer identification number (EIN)	
3 Street address (including room or suite no.)			
4 City or town	5 State or province	6 Country and ZIP or foreign postal code	
7 Name of person to contact		8 Contact telephone number	
9 Name of Designated Government Entity (only if applicable)		10 Employer identification number (EIN)	
11 Street address (including room or suite no.)			
12 City or town	13 State or province	14 Country and ZIP or foreign postal code	
15 Name of person to contact		16 Contact telephone number	

**For Official Use Only**



17 Reserved

18 Total number of Forms 1095-C submitted with this transmittal

## Part II ALE Member Information

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member

21 Is ALE Member a member of an Aggregated ALE Group?  Yes  No

If "No," do not complete Part IV.

### 22 Certifications of Eligibility (select all that apply):

A. Qualifying Offer Method     B. Qualifying Offer Method Transition Relief     C. Section 4980H Transition Relief     D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_



**Part III ALE Member Information—Monthly**

	(a) Minimum Essential Coverage Offer Indicator		(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4980H Transition Relief Indicator
	Yes	No				
23 All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24 Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25 Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26 Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
27 Apr	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
28 May	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	

# Employer-Provided Health Insurance Offer and Coverage

► Information about Form 1095-C and its separate instructions is at [www.irs.gov/f1095c](http://www.irs.gov/f1095c).

VOID  
 CORRECTED

## Part I Employee

1 Name of employee		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			

## Applicable Large Employer Member (Employer)

## Part II Employee Offer and Coverage

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)													

## Part III Covered Individuals

If Employer provided self-insured coverage, check the box and enter the information for each covered individual.

	(a) Name of covered individual(s)	(b) SSN	(c) DOB (If SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
					Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17	Dependents			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



# Tips for filing

1. If no SSN, use the TIN
2. You can count your employees monthly or by payroll covering the month
3. Have to count ALL employees including PT folks

**TRACKING IS KEY AND CRITICAL – start NOW!!**



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# Caution: Use and Misuse of Independent Contractors



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# Advantages to Independent Contractor Relationship

- **Employer does not pay:**
  - their share of Social Security and Medicare taxes;
  - unemployment taxes;
  - workers compensation premiums;
  - **Employee benefits**
- **Worker not entitled to make Discrimination Claims.**

**DOL quotes one study which estimated employers can cut labor costs by 20-40% by misclassifying employees as independent contractors.**

# Employee v. Independent Contractor Tests

- **Economic Realities Test (FLSA)**
- **IRS Control Tests**
- **Common law 12 Significant Factors – ERISA for benefit determination**
- **EEOC Guidance for applicability of discrimination laws**





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# 6) Department of Labor – Wage and Hour



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# FLSA

## Fair Labor Standards Act Basics



**Must pay minimum wage;**  
**Must pay overtime when owed;**  
**Equal pay for equal work;**  
**Child labor restrictions; and**  
**Keeping wage and OT records.**



# DANGERS OF FLSA VIOLATIONS

## PERSONAL LIABILITY:

Owners

President

Other Executives

HR Department



- **Liable for:**
  - Unpaid wages
  - Additional equivalent amount as liquidated damages
  - Attorney fees and court costs

# FLSA

## Exemption Tests – avoiding Overtime

### Salary Level

- Earn at least \$455 a week (\$23,660 a year).

### Salary Basis

- Predetermined amount earned regardless of quality or quantity of work.

### Job Duties

- White Collar Exemptions.

# FLSA

## “White Collar” Exemptions

### Apply to:

1. Executives
2. **Administrative Employees**
3. Professionals – learned and creative
4. Outside Sales Employees
5. Computer Employees
6. Highly Compensated Employees

# 2 Sides of Compliance

- Disclosures
- Acknowledgements
- Notifications
- Signatures
- Proof

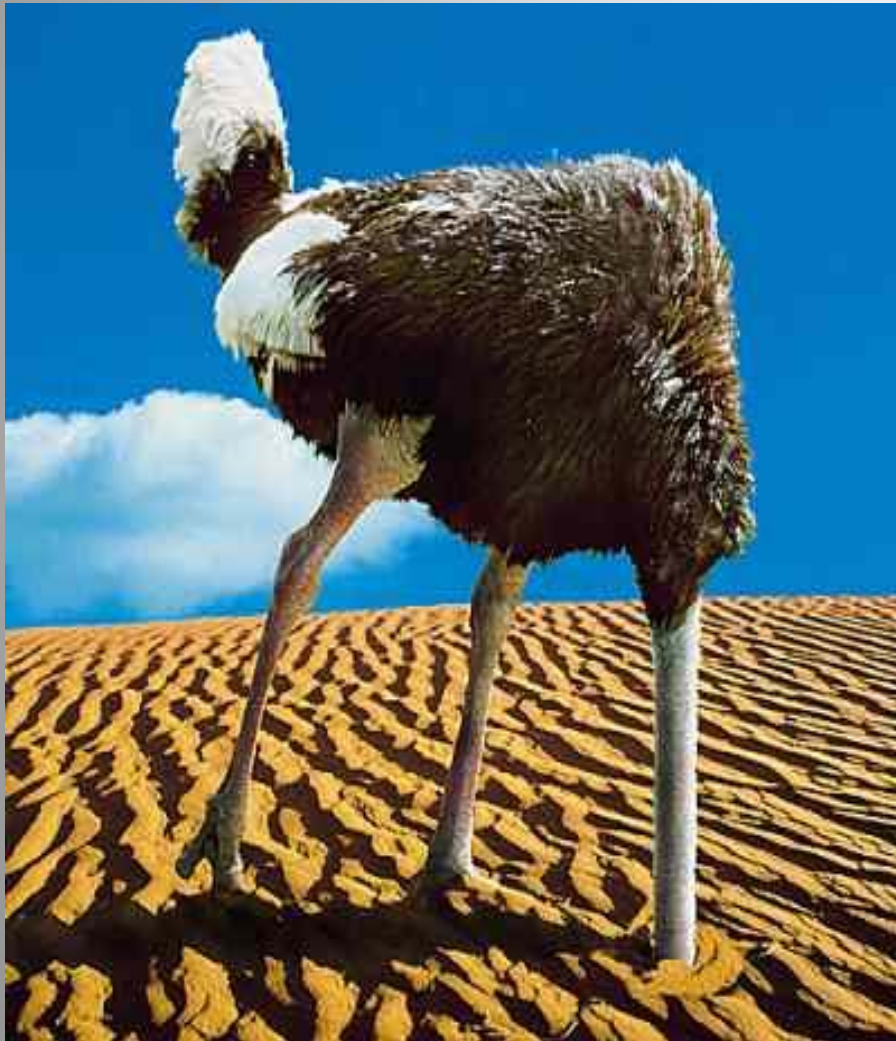
- Hours worked
- Hours off
- For whom did they work
- Type of employee
- Payroll Data



**Both are equally important**

# EMPLOYERS HAVE OPTIONS

Head in the sand.....



How do you eat an elephant?



contain  
specific q



# Take Aways

- **Know Your Size and Sandbox**
- **Recordkeeping is Key:**
  - 1094C
  - 1905c
  - Marketplace Notice
  - Can you prove your size and your offerings??
  - Keep track of hours worked...
- **Perform an internal HR audit on ALL aspects.**
  - Erisa Wrap
  - Handbook updates
  - What else??
- **Identify potential risks/liabilities and put a plan of action in place to resolve them.**



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Thank you!!



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