



Memorandum

December 1, 2023

To: Contributing Employers

From: Board of Trustees, Laborers Health and Welfare Trust Fund for Northern California

RE: **Affordable Care Act's Requirements Applicable to Large Contributing Employers**

The Affordable Care Act (ACA) added the employer shared responsibility provisions under IRC Section 4980H of the Internal Revenue Code (IRC), which requires large employers with more than 50 full-time employees, or equivalent, to provide health coverage under certain conditions or face a financial penalty. The regulations state that an employer contributing to a multiemployer plan will be treated as having met its obligations to offer health coverage with respect to a full-time employee if the employer is required by a collective bargaining agreement (or appropriate related participation agreement) to contribute to a multiemployer plan on behalf of that employee provided that the multiemployer plan provides coverage to individuals who satisfy the plan's eligibility conditions, meeting the affordability and minimum value requirements and that offers coverage to those individuals' dependents.

The Internal Revenue Service (IRS) has implemented two different sets of detailed notice and reporting requirements that will help to enforce the employer requirements. One set of rules (IRC Section 6055) applies to health plans that provide minimum essential coverage, including self-insured multiemployer plans and insurance carriers. The other set (IRC Section 6056) applies to large employers (i.e., those with at least 50 full-time employees, including full-time equivalents).

On December 2, 2019, the Treasury Department and the IRS issued Notice 2019-63 relating to the reporting required under the Affordable Care Act. In the Notice, the IRS acknowledged that Congress reduced the individual penalty to zero effective January 1, 2019. **The elimination of the individual penalty in 2019 does not technically eliminate the requirement to have healthcare coverage, it only eliminates the penalty. Employers and insurers are still required to produce and file forms 1095B and 1095C.**

Large Employer Reporting: Under IRC Section 6056, large employers must furnish a copy of the Form 1095-C to full-time employees no later than March 1, 2024. In addition, they must file the Forms 1094-C and 1095-C with the IRS by March 1, 2024, or March 31, 2024, if filing electronically.

The State of California announced new reporting requirements, for the State ACA filing due for tax year 2021 and future years. The California Franchise Tax Board (FTB) will allow these reporting requirements to be met using the federal IRS form 1094/1095. Therefore, employers who provide coverage statements to individuals using Form 1095-B or C, will not need to provide a separate notice. Instead, IRS Form 1094 may be submitted to the California Franchise Tax Board to satisfy the employer state reporting requirement. Employers may use the following site to register to file the return. <https://www.ftb.ca.gov/file/business/report-mec-info/index.asp>

The Plan cannot and will not file any Form 1095-C or Form 1094-Cs on behalf of any large contributing employer. As such, any and all large contributing employers (those with more than 50 or more full-time employees (including equivalents) are responsible for satisfying these reporting obligations for all of their full-time employees. Large contributing employers will need to determine which months during the year individuals worked full-time for that employer, and prepare a Form 1095-C to be sent to those individuals. The contributing employer uses records for itself and its controlled group members – it does not have to determine whether an employee worked for any other employers in the industry. Instructions published by the IRS provide additional guidance on how contributing employers would prepare the Form 1095-C for full-time employees for whom they contribute to a multiemployer plan.¹

Plan Reporting: The Fund Office will prepare and report plan participant information on Form 1095-B and Form 1094-B for Plan participants (and any covered dependents) who were enrolled in and receiving self-insured coverage under the Plan during the tax year, in accordance with IRC Section 6055.

For the 2021 Tax Year and future years: The Fund Office will also report Form 1095-B and 1094-B to the State of California.

For Participants with HMO coverage, Kaiser will prepare and report plan participation information on Forms 1095-B and Form 1094-B for Plan participants (and any covered dependents) who were enrolled in and receiving insured coverage under the Plan during the tax year, in accordance with Section 6055. The same is true for Participants enrolled in the Anthem Medicare Advantage plan.

Health plans, including the Fund (or insurer), must furnish a copy of the Form 1095-B to participants no later than March 1, 2024, and file a form 1094-B and the Form 1095-B with the IRS by March 1, 2024, or March 31, 2024, if filing electronically.

The following information will assist contributing employers to understand the Fund’s rules under the ACA and IRC Section 4980H. In addition, this will assist employers to complete reporting required to be submitted by large (50 or more full-time employees or equivalents) employers under IRC Section 6056. Specifically, the following information will assist a large contributing employer as it completes Form 1095-C for each of its full-time employees for whom the employer is required to contribute to the Fund.

1. MINIMUM ESSENTIAL COVERAGE

The Fund provides minimum essential coverage, as defined in the ACA.

2. MINIMUM VALUE

All health coverage options under the Fund meet the 60 percent minimum value standard.

3. DEPENDENT COVERAGE

The Fund offers coverage to eligible participants and to the following dependents:

- Spouses
- Sons/daughters and adopted children (including those placed for adoption with a participant). These dependents are eligible for coverage through the end of the month in which they turn age 26.
- Other dependents as described in the Fund’s Summary Plan Description (as amended from time to time).

4. PREMIUMS/AFFORDABILITY

Participants do not pay premiums to the Fund for self-only coverage. Because this is less than the maximum monthly contribution that meets the FPL safe harbor threshold, the coverage is deemed affordable under the ACA.

¹ <http://www.irs.gov/pub/irs-pdf/i109495c.pdf>

5. COMPLETING THE FORM 1095-C

If the employer contributed to this plan, the coverage was minimum value, affordable, and provided to dependents until the end of the month in which they turn 26. The contributing employer should identify which of its employees are full-time. For reporting offers of coverage for 2023, an employer relying on the multi-employer arrangement interim guidance should enter code 1H on line 14 for any month for which the employer enters code 2E on line 16 (indicating that the employer was required to contribute to a multiemployer plan on behalf of the employee for that month and therefore is eligible for multi-employer interim rule relief). For reporting for 2023, Code 1H may be entered without regard to whether the employee was eligible to enroll in coverage under the multi-employer plan. For 2024 and future years, reporting for offers of coverage made through the multi-employer plan may be reported in a different manner.

This communication does not constitute accounting or tax advice. Contributing employers should consult with their tax preparers on their specific circumstances and on how to complete these forms.