

Is There a Penalty If an Employer Does Not Timely File 2023 Forms 1094/1095?

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QUESTION: Is there an information reporting penalty if an applicable large employer (ALE) is unable to submit the 2023 Forms 1094/1095-B and 1094/1095-C to the IRS by the filing deadline? And are there penalties for failure to timely provide 2023 Forms 1095-B/C to current and former employees?

ANSWER: Yes, there is a penalty if an employer does not file Affordable Care Act (ACA) information returns to the IRS and furnish statements to employees on time. As background, information returns provide the IRS data to determine if an ALE offers minimum essential coverage to at least 95% of full-time employees that is minimum value and affordable. An ALE for a calendar year is an employer who employed (along with members of its controlled group) an average of at least 50 full-time employers (including full-time equivalent employees) on business days during the preceding calendar year. Beginning in 2024 (for 2023 filings), filers with ten or more returns in total (counting almost all information return types, including these forms, Forms W-2 and 1099) must file all information reporting forms electronically—this is an expansion of mandatory electronic filing for information returns.

The Code imposes penalties for failing to file with the IRS and to furnish statements to individuals. Failures include—in addition to late filings—omitting any required information, including incorrect information, or declining to file electronically. Because separate penalties apply for returns filed with the IRS and statements furnished to employees, failures can easily result in “double” penalties—one for the statement to be furnished to an individual and a second penalty for the return to be filed with the IRS. There are safe harbor rules that, for penalty purposes, treat information returns with erroneous dollar amounts as correct returns or statements if the errors are de minimis in dollar amount, except in cases of intentional disregard of the requirements.

For 2023 returns and statements filed and furnished in 2024, the penalty for failing to file electronically is increased to \$310 per return, not to exceed \$3,783,000 (\$1,261,000 for filers with gross receipts \$5 million or less for the three most-recent taxable years). Failures corrected within 30 days result in reduced penalties of \$60 per return or statement, not to exceed \$630,500 (\$220,500 for filers with gross receipts of \$5 million or less for the three most-recent taxable years). Failures corrected by August 1 result in reduced penalties of \$120 per return or statement, not to exceed \$1,891,500 (\$630,500 for filers with gross receipts of \$5 million or less for the three most-recent taxable years). Special rules apply that increase the penalties if there is intentional disregard of the requirement to file the returns and furnish the required statements.

The 2023 Forms 1095-B/C are due to individuals March 1, 2024. The deadlines to file the 2023 Forms 1094/1095-B and 1094/1095-C with the IRS are February 28 for paper filings and April 1, 2024 (because March 31st falls on a Sunday), if filed electronically. Entities may request an automatic 30-day extension of time to file with the IRS by submitting Form 8809, Application for Extension of Time to File Information Returns, on or before the due date for filing the forms. ALEs should prepare to timely file the information returns or request an extension of time to avoid IRS penalties.

For more information, see EBIA's Form 1094/1095 Workbook for Employers and Advisors at Sections IX.E ("Method of Furnishing Statements"), IX.F ("Penalties and Corrections"), X.C ("Filing Methods: Paper or Electronic"), and X.D ("Penalties, Corrections, and Replacement Filings"). See also EBIA's Health Care Reform manual at Section XXXVI.D ("Information Reporting of Employer-Sponsored Coverage (Applicable Large Employers)").

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