ACA COMPLIANCE OVERVIEW



ACA Violations—Penalties and Excise Taxes

The Affordable Care Act (ACA) includes numerous reforms for group health plans and creates compliance obligations for employers and health plan sponsors. The ACA, for example, restricts health plans from imposing pre-existing condition exclusions and requires coverage for preventive care services without cost sharing. Some of the reforms for health plans apply to all health plans, while others apply only to non-grandfathered plans or to insured plans in the small group market.

Failing to comply with the ACA's requirements can trigger substantial penalties for an employer. The potential consequences vary depending on the ACA requirement that is involved and the nature and extent of the violation. Employers should keep these consequences in mind as they review their compliance with the ACA.

This Compliance Overview summarizes the penalties imposed under the Internal Revenue Code (Code) for violations of certain ACA provisions.

LINKS AND RESOURCES

- IRS information return penalties webpage
- IRS Frequently Asked Questions on the ACA's employer shared responsibility rules, which include penalty information
- IRS Revenue Procedure 2024-40, which includes penalty amounts for ACA returns filed in 2026 (Code Sections 6055 and 6056)

Overview

- The ACA requires applicable large employers (ALEs) to either provide affordable, minimum-value health coverage to full-time employees or face penalties.
- Employers and plan sponsors must also comply with reporting and disclosure requirements under the ACA, such as the health coverage reporting requirements under Code Sections 6055 and 6056.
- In addition, the ACA imposes several taxes and fees, such as the Patient-centered Outcomes Research Institute fees (PCORI fees).

ACA COMPLIANCE OVERVIEW

Group Health Plan Reforms

Code Section 4980D imposes an excise tax for a group health plan's failure to comply with certain requirements, including the ACA's reforms for group health plans. Failing to comply with a group health plan requirement may trigger an excise tax of **$100 per day** with respect to each individual to whom the failure relates.

ACA Requirements

The $100 per individual, per day excise tax may be triggered by a violation of any of the following ACA requirements for group health plans:

ACA Requirement	Affected Group Health Plans
Coverage for adult children up to age 26	Health plans offering dependent coverage
No lifetime or annual limits on the dollar value of essential health benefits (EHB)	All health plans
No coverage rescissions, except in cases of fraud or intentional material misrepresentation	All health plans
No pre-existing condition exclusions	All health plans
Coverage of preventive health services without cost-sharing	Non-grandfathered health plans (certain exceptions apply to the contraceptive coverage mandate)
Patient protections (designation of primary care provider, designation of pediatrician as primary care provider, patient access to obstetrical and gynecological care and improved access to emergency services)	All health plans
Improved internal claims and appeals process, including external review requirements	Non-grandfathered health plans
Uniform summary of benefits and coverage (SBC) requirement	All health plans
No waiting periods in excess of 90 days	All health plans
Nondiscrimination rules for fully insured health plans	Non-grandfathered, fully insured health plans *(delayed indefinitely)*
Limits on cost-sharing (out-of-pocket maximum for EHB)	Non-grandfathered health plans

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ACA Requirement	Affected Group Health Plans
Coverage for approved clinical trials	Non-grandfathered health plans
No discrimination based on health status (including rules for wellness programs)	Non-grandfathered health plans Final wellness plan regulations apply to both non-grandfathered and grandfathered health plans
Comprehensive health insurance coverage (EHB requirement)	Non-grandfathered insured health plans in the small group market
No discrimination against health care providers acting within the scope of license	Non-grandfathered health plans

Reporting and Paying the Tax

For health plans sponsored by a single employer, the **tax is imposed on the employer sponsoring the plan**. The excise tax does not apply to health plans sponsored by governmental employers, and it does not apply to health insurance issuers. However, the excise tax does apply to health plans sponsored by churches.

Any applicable excise taxes must be reported on IRS Form 8928, "Return of Certain Excise Taxes under Chapter 43 of the Internal Revenue Code." Instructions for Form 8928 are also available. An employer must file Form 8928 and pay the excise tax by the due date of the employer's federal income tax return, without taking into account any extensions. Filers may obtain an automatic six-month extension of time to file Form 8928, but this filing extension does not extend the time to pay the excise taxes that are due.

Amount of Tax

The penalty for not complying with the ACA's group health plan reforms is generally $100 per day, per individual, per violation, subject to the following minimum and maximum amounts:

- If a compliance failure is discovered by the IRS on audit, the **minimum excise tax** is generally $2,500. However, if the violations are significant, the minimum excise tax increases to $15,000.
- For single employer plans, the **maximum excise tax** for unintentional failures is the lesser of 10% of the aggregate amount paid by the employer during the preceding tax year for group health plan coverage or $500,000.

Exceptions

There are some exceptions to the excise tax for group health plan violations. The excise tax may not apply if the failure is not discovered when exercising reasonable diligence, or if it is due to reasonable cause and is corrected within 30 days after the entity knew (or in exercising reasonable diligence, should have known) that the failure existed. A failure is corrected if it is retroactively undone to the extent possible and the affected beneficiary is placed in a financial position as good as he or she would have been in if the failure had not occurred.

In addition, small employers with insured health plans may be exempt from the excise tax for certain failures if the violation was solely because of the health insurance coverage offered by the insurer. For this purpose, a small employer is an employer with an average of 50 or fewer employees on business days during the preceding calendar year.

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Summary of Benefits and Coverage

The ACA establishes a penalty of up to **$1,000** for each willful failure to provide the SBC on time. This maximum penalty amount is adjusted for inflation each year. For penalties assessed after Jan. 15, 2025, the maximum penalty amount is **$1,443 per failure**. In addition, failing to provide the SBC may also trigger an excise tax of **$100 per day,** per individual, as discussed above.

The ACA also requires health plans and issuers to provide at least **60 days' advance notice** of any material modifications to plan terms that take effect during a plan year and are not reflected in the most recently provided SBC. A willful failure to provide this 60-day advance notice may also trigger a $1,000 penalty (as adjusted for inflation) and an excise tax of $100 per day, per individual.

Employer Shared Responsibility Rules

The ACA's employer shared responsibility rules are often referred to as the "pay-or-play" rules or the employer mandate. Under these rules, ALEs may face penalties if one or more of their full-time employees obtains a subsidy through an Exchange. An ALE is an employer that had, on average, at least 50 full-time employees, including full-time equivalents (FTEs), during the preceding calendar year. An individual may be eligible for a subsidy either because the ALE does not offer health plan coverage to the individual or offers coverage that is either not "affordable" or does not provide "minimum value" (MV).

The amount of the employer shared responsibility penalty generally depends on whether an ALE offers coverage to **substantially all** full-time employees (and their dependents). In general, "substantially all" means 95% of an employer's full-time employees and dependents.

Penalty for Not Offering Coverage to Substantially All Full-time Employees

Under these rules, an ALE will be subject to a penalty if any of its full-time employees receives a subsidy for an Exchange plan. The monthly penalty assessed on ALEs that do not offer coverage to substantially all full-time employees (and their dependents) is equal to **the ALE's number of full-time employees (minus 30) multiplied by 1/12 of $2,000 for any applicable month**. The $2,000 penalty amount is adjusted for each calendar year (**$2,900** for 2025 and **$3,340** for 2026).

Penalty for Offering Coverage That Does Not Meet ACA Standards

ALEs that do offer coverage to substantially all full-time employees and dependents may still be subject to penalties if at least one full-time employee obtains a subsidy for an Exchange plan because the ALE did not offer coverage to all full-time employees, or the ALE's coverage is unaffordable or does not provide MV.

The monthly penalty assessed on an ALE for each full-time employee who receives a subsidy will be **1/12 of $3,000 for any applicable month**. However, the total penalty for an employer would be limited to the penalty amount for not offering coverage to substantially all full-time employees. The $3,000 penalty amount is adjusted for each calendar year (**$4,350** for 2025 and **$5,010** for 2026).

Penalties Related to Reporting Requirements

The Code also includes the following general penalties that apply for violations of reporting requirements, including those imposed under the ACA:

- Failure to file correct information returns (under Code Section 6721); and

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- Failure to furnish correct payee statements (under Code Section 6722).

However, penalties may be waived if the failure is due to reasonable cause and not to willful neglect. Penalties may be reduced if the reporting entity corrects the failure within a certain period of time. Also, lower annual maximums apply for entities that have average annual gross receipts of up to $5 million for the three most recent taxable years.

For returns due in 2025 and 2026, the adjusted penalty amounts are:

Penalty Type	Per Violation		Annual Maximum		Annual Maximum for Employers with ≤$5 Million in Gross Receipts	
For Returns Due in:	2025	2026	2025	2026	2025	2026
General	$330	$340	$3,987,000	$4,098,500	$1,329,000	$1,366,000
Corrected within 30 days	$60	$60	$664,500	$683,000	$232,500	$239,000
Corrected after 30 days, but before Aug. 1	$130	$130	$1,993,500	$2,049,000	$664,500	$683,000
Intentional disregard*	$660	$680	N/A		None	

**For failures due to intentional disregard of the filing requirement, the penalty is equal to the greater of either the listed penalty amount or 10% of the aggregate amount of the items required to be reported correctly.*

Form W-2 Reporting—Aggregate Cost of Health Care

The ACA requires employers to report the aggregate cost of employer-sponsored group health plan coverage on their employees' Forms W-2. Until the IRS issues further guidance, this reporting requirement is optional for small employers (those that file fewer than 250 Forms W-2). Beginning in 2012, the IRS made the reporting requirement mandatory for large employers. Thus, the W-2 reporting requirement is currently mandatory for large employers, but optional for small employers.

Violations of the ACA's W-2 reporting requirement are subject to the existing rules on filing Forms W-2. See the penalty amounts under Sections 6721 and 6722 (described above) for employers that fail to comply with the W-2 reporting requirement. There are some exceptions to the Form W-2 reporting penalties. For example, a penalty will not apply if the employer can show that the failure was due to reasonable cause and not to willful neglect. In general, the employer must be able to show that the failure was due to an event beyond the employer's control or due to significant mitigating factors, and the employer acted in a responsible manner and took steps to avoid the failure.

Employer Reporting—Code Sections 6055 & 6056

The ACA created reporting requirements under Code Sections 6055 and 6056. Under these reporting rules, certain employers must provide information to the IRS about the health plan coverage they offer (or do not offer) to their employees. Employers may also need to provide related statements to employees. These reporting requirements apply to:

- **Employers with self-insured health plans (Code § 6055)**—Every health insurance issuer, sponsor of a self-insured health plan, government agency that administers government-sponsored health insurance programs and any

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other entity that provides minimum essential coverage must file an annual return with the IRS, reporting information for each individual who is provided with this coverage.

- **ALEs with at least 50 full-time employees, including FTEs (Code § 6056)**—ALEs subject to the ACA's shared responsibility provisions must file a return with the IRS that reports the terms and conditions of the health care coverage provided to the employer's full-time employees for the calendar year.

To minimize any burdens and streamline the reporting process, the IRS allows reporting entities subject to both Sections 6055 and 6056 to use a single, combined form for reporting the information required under both requirements.

Type of Reporting	Affected Employers	Required Information	Deadlines
Code § 6055—Health coverage reporting by health insurance issuers and self-insured plan sponsors	Employers with self-insured health plans	Information on each individual provided with coverage	IRS filing deadline is March 31 of the year following the calendar year to which the return relates. In general, the deadline for providing employee statements is 30 days after Jan. 31 of the year immediately following the calendar year to which the statements relate (i.e., March 2 for a non-leap year). However, if certain requirements are met, employers are only required to provide employee statements upon request. Statements must be provided within 30 days after the date of the request. Filing extensions may be available in certain limited circumstances.
Code § 6056—ALE health coverage reporting	Applicable large employers (those with at least 50 full-time employees, including FTEs)	Terms and conditions of health plan coverage offered to full-time employees	

A reporting entity that fails to comply with the Section 6055 or Section 6056 reporting requirements may be subject to the general reporting penalties for failure to file correct information returns and failure to furnish correct payee statements under Code Sections 6721 and 6722 (see above).

PCORI Fees

Under the ACA, health insurance issuers and self-funded group health plans must pay fees to finance comparative effectiveness research. These research fees are called Patient-centered Outcomes Research Institute fees (PCORI fees). The fees were originally scheduled to apply for plan years ending on or after Oct. 1, 2012, but not for plan years ending on or after Oct. 1, 2019. However, a federal spending bill enacted at the end of 2019 extended the PCORI fees for an additional 10 years. As a result, these fees continue to apply for the 2020-2029 fiscal years. The PCORI fees are due by July 31 of the calendar year following the plan year to which the fee applies.

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For plan years ending on or after Oct. 1, 2024, and before Oct. 1, 2025, the PCORI fee amount is $3.47 per covered life (IRS Notice 2024-83). For plan years ending on or after Oct. 1, 2025, and before Oct. 1, 2026, the PCORI fee amount is $3.84 per covered life (IRS Notice 2025-61).

Since the PCORI fee is considered a tax that is reportable on IRS Form 720, any related penalty for failure to file a return or pay a tax likely applies. Under Code Section 6651, the penalty for failing to file a return or pay a tax is the full amount of the tax, plus possible excise taxes ranging from .5% to 25% of the original tax. However, there are exceptions to the excise taxes for failures that are due to reasonable cause and not due to willful neglect.

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