



Large Employer  
**Compliance Checklist**

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# Compliance Checklist

Large Employers - 2019

Keeping track of compliance obligations under ERISA, COBRA, HIPAA, and the Affordable Care Act is no simple task. At Marshall & Sterling, we strive to keep clients informed with valuable and timely information on issues that impact your business and benefit plans. The following checklist provides an overview of compliance items large employers should be aware of in 2018 and beyond.



## Group Health Plan Design:

- Cost-sharing limits:** A plan's annual out-of-pocket maximum for essential health benefits must be no more than \$7,900 per person and \$15,800 per family (2019 plan year).
- Health FSA Limit:** The amount of annual elective contributions limited to no more than \$2,700 (2019 plan year).
- Health HSA Contribution Limit:** Self-only: \$3,500 and Family: \$7,000 with \$1,000 catch up allowed for those 55 & over (2019 plan year).
- Waiting period:** No more than 90 days.
- Individual Policy Reimbursement Prohibition:** Employer reimbursement arrangements for individual policies violate the ACA and will trigger \$100/day/employee excise taxes under Internal Revenue Code §4980D.

## Employer Reporting Requirements:

- W-2 Reporting of Employee Health Coverage Cost:** Report total cost of each employee's health coverage on box 12 of Form W-2 (Currently optional for employers that file fewer than 250 Form W-2s in the previous calendar year).
- Employer Reporting (IRC § 6056) (ALEs with 50+ FTEs only):** Prepare and distribute Form 1095-C to each person who is a full-time employee for any month in the calendar year to report whether health coverage was offered. Form 1095-C is due to employees by January 31 of the following year; then file copies along with Form 1094-C with the IRS by February 28 if filing by paper (or by March 31 if filing electronically).
- Health Coverage Reporting (IRC § 6055) (self-funded plan sponsors):** Prepare and distribute Form 1095-B to all individuals covered by the plan for any month during the calendar year, and file copies along with Form 1094-B with the IRS. Due dates are the same as shown for Employer Reporting above. If plan sponsor is also an ALE, use Forms 1095-C and 1094-C in lieu of Forms 1095-B and 1094-B.
- Form 5500 Annual Return (plans with 100 + participants at the beginning of the plan year):** Plan sponsors must file IRS Form 5500, reporting on the characteristics and operations of the plan, each year by the last day of the seventh month after their plan year ends.

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## Ongoing Notice & Disclosure Requirements:

- ❑ **Summary of Benefits and Coverage (SBC):** Provide at enrollment and upon request. Typically provided by insurance carrier, but employer is responsible for distribution.
- ❑ **Exchange (Marketplace) Notice:** Federal notice explaining the availability of the Health Insurance Exchanges (Marketplaces). Under the FLSA, employers must provide to all employees within 14 days of hire.
- ❑ **Grandfathered Plan Notice (grandfathered plans only):** Include with materials describing the plan's benefits, such as enrollment materials, summary plan description (SPD).
- ❑ **Notice of Patient Protections (non-grandfathered plans only):** Provide at enrollment and include in summary plan description (SPD).
- ❑ **ERISA Required Disclosures:** Summary Plan Description (SPD); Summary of Material Modification (SMM); COBRA/HIPAA/CHIPRA/WHCRA/GINA Notices; Other employer specific items, e.g. Wellness Program disclosure.

## Group Health Plan Taxes & Fees:

- ❑ **Patient Centered Outcomes Research Institute (PCORI):** For self-funded group health plans (including non-excepted HRAs) count the average number of participants for the plan year ending in 2018 and pay the corresponding annual fee by July 31, 2019. The fee is filed and paid once per year using IRS Form 720.
- ❑ **Cadillac Tax:** Excise tax on "high cost" employer sponsored health plans scheduled to take effect in 2022. The tax is 40% of the cost of health coverage that exceeds predetermined threshold amounts.
  - Cost of coverage includes the total contributions paid by both the employer and employees.
  - For planning purposes, the thresholds for high-cost plans are currently **\$10,200** for individual coverage, and **\$27,500** for family coverage (these figures will be updated before the tax takes effect in 2022 and will be indexed for inflation in future years).

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## The Employer Mandate - “Play or Pay”:

Applicable Large Employers ( ALEs ) may be assessed a penalty for failure to offer compliant health coverage to full-time employees if at least one employee receives a government subsidy to buy coverage through an Exchange (Marketplace). To avoid penalty, coverage must be:

- ❑ **Offered to all “full-time” employees:** Determine whether an employee meets the ACA’s definition of full-time and, if so, offer coverage on a timely basis. IRS regulations provide guidance for determining full-time status by tracking each employee’s hours of service based on specific measurement methods.
- ❑ **Affordable:** Check that lowest-cost self-only coverage option available to employees does not exceed 9.86% (*for 2019*) of their income under an available safe harbor (keeping in mind recent IRS clarification on the impact of Opt-Out Benefits & HRAs).

## Recordkeeping Recommendations:

Employers should maintain detailed documentation of all materials, data and records used in meeting their compliance requirements. Examples of essential recordkeeping elements include:

- ❑ A written plan that describes the benefit structure and guides day-to-day operations.
- ❑ A system to track contribution and benefit payments, maintain participant and beneficiary information, and to accurately prepare any necessary reporting documents.
- ❑ Documents to provide plan information to employees participating in the plan and to the government, including copies of required notices and a description of the distribution processes.
- ❑ **ALEs:** Records of employee hours of service and measurement methods for administration of the Employer Mandate. Documentation of each employee’s full-time status and, where applicable, documentation of health coverage offers to employees.

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