

NORTHERN CALIFORNIA PIPE TRADES TRUST FUNDS FOR UA LOCAL 342

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December 2016

Re: **ACA Employer Shared Responsibility & Minimum Essential Coverage Reporting Information (2016 COVERAGE)**

Dear Employer:

It is that time of the year again to file your Affordable Care Act (“ACA”) Forms 1094-C and 1095-C with the IRS. We are providing you with the following information to assist you with your 2017 ACA reporting obligations for your collectively-bargained or subscription agreement employees (if applicable), who are eligible for or enrolled under the Northern California Pipe Trades Health and Welfare Plan (“Plan”). As a reminder, Form 1095-C are due to your full-time employees by the extended deadline of **March 2, 2017** (from Jan. 31, 2017) **and** Form 1094-C and 1095-C are due to the IRS by **Feb. 28, 2017** (if file by paper) or **March 31, 2017** (if file electronically).

NOTE: IF YOU ARE A SMALL EMPLOYER (HAVE LESS THAN 50 FULL-TIME EMPLOYEES, INCLUDING FULL-TIME EQUIVALENT EMPLOYEES), YOU MAY DISREGARD THIS NOTICE.

As a **LARGE CONTRIBUTING EMPLOYER** you are responsible for complying with the Employer Shared Responsibility provisions under IRC Section 6056, not the Plan. Please consult with your own legal or tax professional for reporting offers of coverage for employees and dependents not covered by this Plan. (Please also refer to Q.4 in the attached FAQ to determine if you are a Small or Large Employer).

The 2016 IRS Instructions have extended the Multiemployer Plan Transitional Relief for employers that contribute to a multiemployer plan for reporting offers of coverage for 2016. Until future guidance states otherwise, the IRS has indicated it will consider employers contributing to a Multiemployer plan (such as this Plan) to be in compliance with the Employer Shared Responsibility provision if: (1) employer required by collective bargaining agreement or participation agreement to contribute to the multiemployer plan on the employee’s behalf, (2) coverage is offered to the employee and dependents in accordance with the plan’s eligibility terms, and (3) coverage is affordable and provides minimum value.

“For reporting offers of coverage for 2016, an employer relying on the Multiemployer 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 multiemployer interim rule relief). For reporting for 2016, Code 1H may be entered without regard to whether the employee was eligible to enroll or enrolled in coverage under the multiemployer plan. For reporting for 2017 and future years, Applicable Large Employers relying on the multiemployer arrangement may be required to report offers of coverage in a different manner. (Please also refer to Q.7 to the attached FAQ.)

The Board of Trustees of this Plan believes all of the Health Plan options (Kaiser HMO, Blue Shield HMO, and Blue Shield PPO) offered to its eligible employees and their dependents are compliant with the ACA provisions:

- This Plan offers coverage to eligible participants, their eligible children (until the end of the month the children reaches age 26), and their eligible spouses.
- This Plan qualifies as minimum essential coverage as defined under the ACA.
- This Plan provides minimum value (at least 60%) coverage.
- This Plan offers affordable coverage (generally, no employee contributions are required for eligible participants to have coverage under this Plan).

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For the Minimum Essential Coverage Reporting requirements under IRC Section 6055:

- Kaiser will file Forms 1094-B and 1095-B with the IRS, and distribute Form 1095-B to employees covered under the Plan's Kaiser HMO option.
- Blue Shield will file Forms 1095-B and 1095-B with the IRS, and distribute Form 1095-B to employees covered under the Plan's Blue Shield HMO and PPO options.

In regards to the recent federal election results, some questions have been raised about whether the ACA will be repealed and if so whether employers should refrain from their reporting obligations. We believe that until the law says otherwise, employers and the Plan should continue with their ACA reporting obligations to avoid any potential penalties.

For more information please visit the IRS website at www.irs.gov/Affordable-CareAct/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act.

Please also refer to the attached Information FAQ for more information.

Sincerely,

Plan Administrator

Please be advised that the Trust Fund cannot provide tax or legal advice to contributing employers. You should consult your own Legal Counsel and Tax Advisor for advice regarding compliance with the Affordable Care Act and Internal Revenue Service provisions.

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Affordable Care Act Employer Shared Responsibility FAO (For 2016 Returns)

(Note: *The questions and answers below were primarily taken from the IRS website and IRS 2016 Instructions to the ACA Employer Reporting Forms. Please visit www.irs.gov for more details.*)

Q1: What is the Employer Shared Responsibility Requirement?

For 2016 and after, Large Employers (employed 50 or more Full-Time employees or a combination of full-time and part-time employees that is equivalent to 50 full time employees during the preceding calendar year) will be subject to the Employer Shared Responsibility penalty only if the employer:

- (1) Does not offer health coverage or offers coverage to fewer than **95%** of its Full-Time employees (works on average at least 30 hours of service per week) and dependents of those employees and at least one Full-Time employee receives a premium tax credit to help pay for coverage on the Exchange;
- or**
- (2) Offers health coverage to all or at least **95%** of its Full-Time employees that is unaffordable or does not provide minimum value and at least one Full-Time employee receives a premium tax credit to help pay for coverage on the Exchange.

Q2: Are Small Employers subject to the Employer Shared Responsibility Requirement?

No. Small Employers with fewer than 50 Full-Time employees, including Full-Time equivalent employees are exempt from the employer mandate and penalties. In other words, Small Employers will not have to complete and file Forms 1094-C and 1095-C with the IRS. (Note: However, Small Employers that sponsor their own self-funded health plans are still subject to the minimum essential coverage reporting requirements under IRC Section 6055).

Q3: What Employers Have to Complete the ACA Employer Reporting Forms?

Large Employers that sponsor a fully-insured or self-insured group health plan will have to complete Forms 1094-C and 1095-C.

For employers who contribute to a fully-insured multiemployer plan, the health insurer will complete and distribute Forms 1094-B and 1095-B, which is a separate ACA reporting requirement for minimum essential coverage.

For employers who contribute to a self-insured multiemployer plan, the Plan will complete and distribute Forms 1094-B and 1095-B.

Q4: How does an Employer determine if they have 50 Full-Time Employees, including Full-Time Equivalent Employees and therefore is subject to the Employer Shared Responsibility provisions?

Whether an Employer is an Applicable Large Employer subject to the Employer Shared Responsibility provisions depends on the average size of an employer's workforce during the prior year. If an Employer has **less than 50 full-time employees, including full-time equivalent employees**, on average during the prior year, the Employer is considered a Small Employer and is therefore not subject to the Employer Shared Responsibility provisions. To determine its workforce size for a year an employer adds its total number of Full-time employees for each month of the prior year to the total number of Full-time equivalent employees for each month of the prior year and divides that total number by 12.

- **Full-time Employee.** Is an employee who has on average at least 30 hours of service per week or at least 130 hours of service during the calendar month.
- **Full-time Equivalent Employees.** Employer determines its number of Full-time equivalent employees for a Month in the following two steps:
 - (1) Combine the number of hours of service of all Part-time (PT) employees for the month but do not include more than 120 hours of service per employee, and
 - (2) Divide the total by 120.

EXAMPLE: In 2016, Company Y has 40 FT employees for each month and 20 PT employees for each month, each of whom has 60 hours of service/month. When combined, the hours of service of the PT employees for a month total 1,200 (20 PT employees x 60 hours = 1,200 hours). Dividing the combined hours of service of the PT employees by 120 equals 10 (1,200 hours / 120 = 10). This number 10 represents the number of Company Y's FT equivalent employees for each month during 2016. Employer Y adds up the total # of FT employees for each calendar month,

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which is **480** (40 FT employees x 12 months = 480). Employer Y then adds up the total # of FT equivalent employees for each calendar month, which is **120** (10 x 12 months = 120). Employer Y adds those two number together and divides the total by 12, which equals **50** [(480 + 120 = 600)/12 = 50]. Employer Y is considered a Large Employer.

Please see <https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer> for more information on determining applicable large employer status.

Q5: Is there an exception for Seasonal Workers when determining whether an employer is a Large Employer subject to the Employer Shared Responsibility provisions?

Yes. An employer is not considered to have more than 50 Full-time employees (including full-time equivalent employees) if both of the following apply for its “seasonal workers” (defined as an employee who performs labor or services on a seasonal basis ex. retail workers employed exclusively during holiday seasons):

1. Employer’s workforce exceeds 50 FT employees (including FT equivalent employees) for 120 days or fewer during the calendar year, and
2. Employees in excess of 50 employed during such 120 day period are seasonal workers.

Please see <https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer> for more information on seasonal workers.

Q6: Is there Transitional relief for an Employer Contributing to a Multiemployer Plan?

Yes. Until future guidance states otherwise, the IRS will consider Large Employers contributing to a Multiemployer plan to be in compliance with the requirement to offer coverage for purposes of any collectively-bargained Full-Time employee if certain requirements are met. These requirements include: (1) employer required by collective bargaining agreement or participation agreement to contribute to the multiemployer plan on the employee’s behalf, (2) coverage is offered to the employee and dependents (or is eligible for section 4980H transition relief regarding offers of coverage to dependents) in accordance with the plan’s eligibility terms, (3) coverage is affordable, and (4) coverage provides minimum value.

Please see Page 17 of <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>.

Q7: How does an Employer rely on the Multiemployer Interim Plan Relief?

For reporting offers of coverage for 2016, an employer relying on the Multiemployer Interim Relief should enter code “1H” (no offer) on line 14 for any month the employer enters code “2E” on line 16 (indicating that the employer was required to contribute to a multiemployer plan on behalf of that employee and therefore is eligible for the multiemployer interim relief). But, for 2017 and onwards the IRS has indicated that this may change. If an employer is relying on the Multiemployer Interim Relief, the code may be entered without regard to whether the employee was eligible to enroll or enrolled in coverage under the Plan. (It appears that employers relying on this relief will not have to obtain eligibility or enrollment data from the Plan for 2016 so long as the employer contributes to the plan on behalf of the collectively-bargained employee).

Please see Page 10 of <https://www.irs.gov/pub/irs-pdf/i109495c.pdf>.

Q8: How does an Employer know whether coverage it offers is Affordable under the ACA?

For 2016, coverage is affordable if an employee’s share of contributions (if any) for employer-provided coverage towards the cost of self-only coverage would cost the employee **9.66%* or less** of the employee’s annual household income for self-only coverage under the employer’s lowest cost option that provides minimum value. (*The affordability percentage is indexed each year by the IRS to account for inflation. This percentage further increases to **9.69% for 2017**). Since Employers would not know their employees’ household income, the IRS has indicated that for purposes of determining whether coverage under a multiemployer plan is affordable, contributing employers can take advantage of one or more of the Three Affordability Safe Harbors: (1) Form W-2 wages, (2) Rate of Pay, and (3) Federal Poverty Line. If an employer meets any of the Safe harbors, the offer of coverage will be deemed affordable for purposes of the Employer Shared Responsibility provisions regardless of whether it was affordable to the employee for purposes of the premium tax credit. An Employer may choose to use one or more of the Safe harbors for all of its employees or for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category.

- **Form W-2 Wages Safe harbor.** Coverage is affordable if the employee’s required contribution towards the employer’s lowest cost self-only coverage **does not exceed 9.66%** of the employee’s Form W-2 wages. This is based on the amount of wages paid to the employee reported in Box 1 of the employee’s Form W-2.
- **Rate of Pay Safe harbor.** Coverage is affordable if the employee’s required contribution towards the employer’s

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lowest cost self-only coverage **does not exceed 9.66%** of an amount equal to 130 hours multiplied by the lower of the employee's hourly rate of pay as of the first day of the coverage period or during the calendar month. For salaried employees, the monthly salary is used instead of 130 multiplied by the hourly rate of pay.

- **Federal Poverty Line Safe harbor.** Coverage is affordable if the employee contribution for the year does not exceed **9.66%** of the federal poverty line for a single individual for the applicable calendar year.

Please see Q&A 19 on the IRS Website (www.irs.gov/Affordable-CareAct/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act) for more information about satisfying the affordability requirement.

Q9: How does an Employer know whether coverage it offers provides Minimum Value under the ACA?

Coverage provides minimum value if it covers at least 60% of the total allowed cost of benefits that are expected to be incurred under the plan. The Department of Health and Human Services ("HHS") and IRS have released a minimum value calculator that employers can use to determine if the plan they offer provides minimum value. Please visit the Department of HHS website for the calculator at <http://www.cms.gov/ccio/resources/regulations-and-guidance/index.html>.

Q10: What Dependents are Employers required to offer coverage under the ACA?

A dependent is an employee's child(ren), including child(ren) who have been legally adopted or legally placed for adoption with the employee, who has not reached age 26. Child(ren) are treated as a dependent for the entire calendar month during which the child(ren) reaches age 26. For this purpose, a dependent does not include a Spouse.

Q11: What are the IRS Reporting Requirements for the Employer Shared Responsibility Provision?

Large Employers who are subject to the Employer Shared Responsibility provision will be required to provide information as to whether they offered full-time employees and their family members access to insurance that provides minimum essential coverage. In 2017, for coverage provided in 2016, the IRS is requiring Large Employers to file Forms 1094-C and 1095-C (including distributing Form 1095-C to your full-time employees). A Form 1095-C is completed for each full-time employee and each submission of the Form 1095-C must have a 1094-C but, only one 1094-C is designated as the authoritative transmittal, which reports the aggregate data for all your full-time employees. The IRS has released 2016 Final Versions of the Forms and Instructions.

- For Form 1094-C, please visit www.irs.gov/pub/irs-pdf/f1094c.pdf.
- For Form 1095-C, please visit www.irs.gov/pub/irs-pdf/f1095c.pdf.
- For Form Instructions, please visit www.irs.gov/pub/irs-pdf/i109495c.pdf.

Q12: When do Employers subject to the Reporting Requirements Need to File Information with the IRS?

Form 1094-C and 1095-C must be filed with the IRS by **February 28 (or March 31 if filing electronically)** following the end of the applicable calendar year. Form 1095-C must be distributed to full-time employees by **January 31** following the end of the applicable calendar year (**HOWEVER: Per IRS Notice 2016-70 the deadline for furnishing statements to individuals has been extended to March 2, 2017**).

Q13: How do Employers file the Forms 1094-C and 1095-C with the IRS?

If you are filing the Forms on paper, the IRS has indicated that the Forms should be sent in a flat mailing (not folded) by First-Class Mail. If filing electronically (which is mandatory for employers required to file 250 or more information returns), employers would be required to file the Forms through the ACA Information Returns (AIR) Program. Employer should refer to Publication 5165 (Guide for Electronically Filing Affordable Care Act Information Returns for Software Developers and Transmitters), currently under development. More information on the AIR program is available at www.irs.gov/for-Tax-Pros/Software-Developers/Information>Returns/Affordable-Care-Act-Information-Return-AIR-Program.

Q14: How do Employers furnish Forms 1095-C Statements to Employees?

Each full-time employee must receive a Form 1095-C (or simplified employee statement, in lieu of the Form 1095-C, if the employer qualifies for this method) by January 31 of the year following the year to which the Form 1095-C relates. **PLEASE NOTE: Per IRS Notice 2016-70 the deadline for furnishing statements to individuals has been extended to March 2, 2017**. The Form 1095-C statements must be distributed on paper by mail (to the last known permanent address or if none, to employee's temporary address) or hand delivered unless the employee affirmatively consents to receiving the Form electronically. In order to obtain affirmative consent, the employee may consent on paper (and must confirm the consent electronically) or electronically (such as by email). *Please see Instructions for Forms 1094-C and 1095-C (2015) for more details.*

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Q15: Are extensions from the filing requirement available?

Yes. The IRS will allow for an automatic 30 day extension of time to file your Forms 1094-C and 1095-C provided you complete a file Form 8809 (Application for Extension of Time to File Information Returns) by the due date of the returns (ex. by March 31, 2017 if filing electronically). *As soon as you know that a 30-day extension of time to file is needed, an extension should be filed by the due dates for the returns.* The Form may be submitted on paper, or through the FIRE system either as a fill-in form or an electronic file. No signature or explanation is required for the extension. Under certain hardship conditions you may apply for an additional 30-day extension. *Please see Instructions for Forms 1094-C and 1095-C (2016) for more details.*

Q16: What are the reporting penalties for failing to file a return or failing to provide the correct statement?

For 2016 returns, failure to file a return or provide a correct statement would subject an employer to a \$250 penalty per return. The total penalty for a calendar year is capped at \$3,193,000 (increased from \$3,000,000). In addition, the penalty is increased if there is an intentional disregard for the requirement to furnish statements to employees. However, penalties may be waived if you can show that the failure was *due to reasonable cause and not willful neglect*. For additional information on penalty relief, see sections 6055 and 6056 FAQs at www.irs.gov/Affordable-Care-Act/Affordable-Care-Act-Tax-Provisions-Questions-and-Answers and IRS Publication 1586 <https://www.irs.gov/pub/irs-pdf/p1586.pdf>