

COMMERCIAL INSURANCE

EMPLOYEE BENEFITS

PERSONAL INSURANCE

RISK MANAGEMENT

SURETY



State Individual Mandate Employer Reporting Guide

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INTRODUCTION

When Congress eliminated the individual mandate in 2017, the Congressional Budget Office (CBO) estimated that eliminating the penalty would lead to 5 million fewer people enrolling in non-group health coverage by 2027. Worried about a negative impact in the individual health insurance market with fewer younger, healthier individuals purchasing individual health insurance policies, some states have responded by looking into state-based "individual mandates." For many states that have already implemented state mandates, there are corresponding employer reporting requirements that employers must be aware of.

Massachusetts has had a state individual mandate (with associated employer reporting requirements) in effect for several years, and now four additional states (California, New Jersey, Rhode Island, and Vermont) and the District of Columbia have followed suit. The first new employer reporting was required in early 2020 for employers with employees in New Jersey and the District of Columbia. In 2021, reporting requirements in California and Rhode Island take effect. Vermont currently does not have an employer reporting requirement associated with its individual mandate.

Below, we have provided details about the reporting requirements in each applicable state. We start with a high-level chart that summarizes the key requirements by state. In the following sections, additional details are provided along with links to resources for further information.

Note that many states have similar, but not completely identical, requirements. For example, many states permit use of the federal 1094s/1095s for reporting, but there are different requirements for which sections need to be completed and the 1094 is not always required. And while some states clearly state that compliance with the federal requirement to provide a statement to covered individuals satisfies the state requirements as well, others do not explicitly state this (although it is likely to be the case if state compliance deadlines are met). Therefore, it is important to pay attention to the nuances in each state's specific requirements to ensure that the compliance obligation is satisfied. Additionally, it is not always entirely clear where the reporting obligation lies, although in most cases, it appears that employers with fully-insured plans may be exempt as long as the insurance company/carrier completes the reporting. In any case, it will be necessary for employers to communicate with their vendors (TPAs and carriers) to determine reporting responsibility and ensure that it is being handled appropriately.

We expect that these and other open issues will be clarified as additional guidance is issued. As we learn more, we will continue to make updates to the information in this guide.

SUMMARY OF STATE EMPLOYER REPORTING REQUIREMENTS

| State/District | Which Employers Must Report (Only Employers offering coverage to a state resident must report) | Must Report To | Forms Required | Deadline |
|----------------|--|---|--|--|
| CA | <ul style="list-style-type: none"> -- Sponsors of self-insured health plans -- Sponsors of fully-insured health plans if carrier does not report -- Includes out-of-state employers offering coverage to CA residents | <ul style="list-style-type: none"> -- Report to the Franchise Tax Board (FTB) -- Provide a written statement to the primary covered individual -- If filing at least 250 forms, must file electronically | Employer can report using form and the information contained in Forms 1094/1095 "B" and "C" | <ul style="list-style-type: none"> First Filings due in 2021 -- January 31 for statements to covered individuals (but no penalty applied for failure to meet this deadline) -- March 31 for filing to FTB (but automatic extension applied until May 31, 2022) |
| MA | MA employer or non-MA employer that conducts business or maintains an office in MA | <ul style="list-style-type: none"> -- Form MA 1099-HC to covered employees who are MA residents -- Copy of information to MA Department of Revenue (DOR) | <ul style="list-style-type: none"> -- Form MA 1099-HC to employees -- Report about information on Form MA 1099-HC to DOR | <ul style="list-style-type: none"> -- Form 1099-HC to employees by January 31 -- Report to DOR by March 31 |
| NJ | <ul style="list-style-type: none"> -- Sponsors of self-insured plans, including non-ALEs -- Sponsors of fully-insured plans if carrier does not report <p>(Includes out-of-state employers offering coverage to NJ residents even if they do not withhold payroll taxes)</p> | <ul style="list-style-type: none"> -- State via the Department of Revenue and Enterprise Services (DORES) secure filing system -- Provide a written statement to the primary covered individual | The state will accept the same 1094/1095 data submitted to the IRS. | <ul style="list-style-type: none"> -- March 2 for statements to primary enrollees -- March 31 for filing to state |

| State/District | Which Employers Must Report (Only Employers offering coverage to a state resident must report) | Must Report To | Forms Required | Deadline |
|-----------------------|--|---|--|--|
| RI | Employers that provide minimum essential coverage – including out-of-state employers that provide coverage to Rhode Island residents | <ul style="list-style-type: none"> -- A return with the Division of Taxation (DOT) -- Statement to primary insured employee | The state will accept the same 1095 data submitted to the IRS | <p>In general, January 31</p> <p>For Tax year 2021 Only: Reports to the state are due March 31, 2022 (Returns to Individuals still due January 31)</p> |
| DC | <ul style="list-style-type: none"> -- All employers who sponsor self-insured group health plans that covered at least one employee who was a District resident during the applicable calendar year -- Employers with fully-insured plans that covered at least 50 FT employees, including at least one employee who was a District resident, during the applicable calendar year | Report to the Office of Tax and Revenue (OTR) and a statement to the covered individual | <ul style="list-style-type: none"> -- The state will accept the same 1094/1095 data submitted to the IRS -- The written statement to individuals may be satisfied by compliance with the IRS requirement to furnish an annual statement of health coverage to employees or covered individuals | <ul style="list-style-type: none"> -- Same deadline as IRS (March 2) for statements to primary enrollees -- Thirty (30) days after the IRS deadline for submitting Form 1095-B or 1095-C, including any extensions (April 30 for 2022) |

CALIFORNIA

California's health care mandate went into effect January 1, 2020. The first round of employer reporting was due in early 2021 for the 2020 tax year.

Impacted Employers

Employers (including out-of-state employers) with 50 or more full-time employees/full-time equivalents in the previous year (i.e., Applicable Large Employers or ALEs) that offer health coverage must report information about California residents enrolled in such coverage.

Employers of any size (including out-of-state employers) that provide MEC to a California resident during a calendar year.

Who Reports?

1094-C/1095-C

ALEs must file and issued statements to individuals for self-insured plans. For fully-insured plans, if the insurer reports to the FTB, then the employer does not need to report. Although not explicitly stated, it appears this means that the employer will need to ensure the carrier plans to report to the FTB for California residents and issue statements to individuals. If not, the employer will retain ultimate responsibility for reporting.

1094-B/1095-B

Employers must file and issue statements to individuals to report employment-based MEC for employees except when health insurance issuers and carriers file on the employers' behalf. Although not explicitly stated, it appears this means that the employer will need to ensure the carrier plans to report to the FTB for California residents and issue statements to individuals. If not, the employer will retain ultimate responsibility for reporting.

Forms Required

ALEs: Federal Forms 1094-C, 1095-C

- Only Part I of Form 1094-C is required for California purposes. Parts II, III, and IV are not required. However, the state will accept the same form submitted to the IRS for federal reporting purposes.

Non-ALE Plan Sponsors of MEC: Federal Forms 1094-B, and 1095-B

Filing Requirements

In general, forms must be filed with the FTB at:

Health Care Mandate
Franchise Tax Board
PO Box 2288
Rancho Cordova, CA 95741-2288

Employers required to file 250 or more information returns must file electronically. This applies separately to the "B" and "C" forms. In other words, if an employer files 500 "C" forms but only 75 "B" forms, it is only required to file the "C" forms electronically. However, the state encourages employers to file electronically even when not required.

Information on how to file electronic returns may be found at: www.ftb.ca.gov/mec.

Deadlines

Forms 1095-B and 1095-C must be provided to employees and individuals receiving MEC by January 31. The FTB has indicated on its website that no penalties will apply for failure to meet this deadline. Employers who have already submitted forms to individuals for federal reporting purposes do not need to make an additional submission for California purposes.

All forms must be submitted to the FTB by March 31, but there is an automatic extension until May 30 in effect.

Penalties

For returns required to be made for 2020 tax year, the penalty for failure to file a correct information return is \$50 per individual included on a return for which the failure occurs.

Resources

More information may be found here:

<https://www.ftb.ca.gov/file/business/report-mec-info/technical-specifications.html>

<https://www.ftb.ca.gov/file/business/report-mec-info/publications.html>

Instructions for Forms 1094-C/1095-C: <https://www.ftb.ca.gov/forms/2021/2021-3895c-publication.pdf>

Instructions for Forms 1094-B/1095-B: <https://www.ftb.ca.gov/forms/2021/2021-3895b-publication.pdf>

MASSACHUSETTS

Massachusetts, unlike other states, had an individual mandate in place even before the federal individual mandate payment was reduced to \$0. Therefore, the reporting requirements below reflect a process that has been in place for several years now.

Impacted Employers

Massachusetts employers and non-Massachusetts employers who conduct business in (i.e., have employees working in Massachusetts or file state taxes such as unemployment taxes) or maintain an office in Massachusetts.

Who Reports?

Employers must distribute Form MA 1099-HC to covered employees who are Massachusetts residents. They must also send a report to the Massachusetts Department of Revenue (DOR) listing the forms they issued.

The carrier is usually required to provide this information, and the plan sponsor of a self-funded plan may rely on its TPA to report. However, in both cases, it is ultimately the employer's responsibility to make sure reporting is completed (meaning that if the carrier or TPA does not report, the employer must do so).

Employers may be required to complete an attestation for their TPA or carrier who is completing the reporting confirming that the coverage they offer constitutes Minimum Creditable Coverage (MCC).

Forms Required

Form MA 1099-HC (or the information necessary for a MA resident to complete their tax filing with respect to MCC).

Filing Requirements

Information Required

According to guidance provided by the MA DOR informally, DOR this morning, the information provided must be sufficient to enable a Massachusetts resident to file their taxes appropriately. In other words, an actual 1099-HC isn't required as long as employees are given the following:

1. Subscriber #
2. Name of the insurance/coverage (employer name for a self-funded plan)
3. Federal ID # of the carrier (or employer for a self-funded plan)

Acceptable Formats

With respect to the form MA 1099-HC itself, there is no standard format and the format may vary among different reporting entities. Again, the information fields must be consistent and must convey the information to the taxpayer that is needed on the taxpayer's Schedule HC.

The information must be filed with the MA DOR electronically. No paper filing is permitted.

Deadlines

Form 1099-HC must be sent to covered employees by January 31.

Reporting to the DOR is due by March 31.

Penalties

\$50 per individual to which the failure relates, not to exceed \$50,000 per year per violator.

Resources

More information may be found here:

<https://www.mass.gov/files/documents/2016/08/st/attestation-let.pdf>

https://www.mass.gov/doc/2019-form-ma-1099-hc-individual-mandate-massachusetts-health-care-coverage/download?_ga=2.82558161.617112979.1607353894-332861417.1607353894

<https://www.mass.gov/info-details/health-care-frequently-asked-questions-for-employers#form-ma-1099-hc-questions->

NEW JERSEY

New Jersey was the second state to enact an individual mandate, which went into effect on January 1, 2019. Under New Jersey's [Health Insurance Market Preservation Act](#), employers that provide health insurance must submit required information returns to New Jersey reporting on individuals' health insurance coverage. Initial reports to individuals and the state were due in 2020 for the 2019 tax year. The requirements below reflect what is required for reports due in 2022 for the 2021 tax year.

Impacted Employers

Applicable Large Employers (ALEs) and non-ALEs who employ New Jersey residents or part-year residents, including out-of-state employers (even if the out-of-state employer does not withhold payroll taxes) must report on coverage provided.

Who Reports?

Employers (ALEs and non-ALEs) with self-funded plans must report.

Employers (ALEs and non-ALEs) with fully-insured plans must report if the insurer does not agree to meet the reporting requirement. Therefore, employers with fully-insured plans should confirm that the carrier plans to file the required forms in accordance with the applicable deadlines.

For multiemployer plans, if the plan sponsor will not file, then participating employers are responsible for reporting. Therefore, an employer participating in a multiemployer plan should contact the multiemployer plan to confirm that it will file the required forms in accordance with the applicable deadlines.

Forms Required

Acceptable Forms

A fully-completed federal form 1095-B, or 1095-C with at least Parts I and III completed, will be accepted.

The state's form, NJ-1095, will also be accepted. (Link to form here: <https://nj.gov/treasury/njhealthinsurancemandate/NJ1095instructions.shtml>)

Note: New Jersey does not require 1094 forms, but will accept them if they are included as part of a larger file that includes 1095 forms.

Unacceptable Forms

Form 1095-C with Parts I and II but not Part III completed will **not** be accepted.

Incomplete Forms 1095-B will not be accepted.

Filing Requirements

Statement to Primary Enrollee

A Form 1095 must be issued to primary enrollees who are New Jersey residents or part-year residents to whom the employer provided minimum essential coverage (MEC). For purposes of the enrollee statement, an employee is considered a "part-year resident" if they are domiciled in New Jersey for at least 15 days in any month.

Statements do not need to be provided to spouses/dependents; however, the state recommends that employers advise employees to provide a copy of any Form 1095 containing coverage information to their adult children residing in New Jersey.

Filing with the State

For companies filing at least 100 returns, the returns must be filed electronically via the Department of Revenue and Enterprise Services' (DORES) secure filing system (Axway).

Submissions may include information about non-NJ residents (e.g., if it is easier to submit a bulk copy of what was filed with the IRS), but HIPAA and state data privacy laws should be considered before relying on this allowance.

Companies with fewer than 100 returns may file electronically or submit one form at a time using NJ's fillable Form NJ-1095.

No paper filing is available.

Deadlines

Statements to primary enrollees who were New Jersey residents or part-year residents during the reporting year are due by March 2.

NOTE: It is important to note that New Jersey requires that the 1095-B be sent to primary enrollees notwithstanding federal relief for that allows it to be posted on a company's website and made available upon request.

Reports to the state are due by March 31.

Penalties

No penalty is specified, but state tax penalties may apply.

Resources

More information may be found here:

<https://www.nj.gov/treasury/njhealthinsurancemandate/employers.shtml>

RHODE ISLAND

Rhode Island's Rhode Island's individual mandate went into effect January 1, 2020. The first reports were due in 2021 for the 2020 tax year.

Impacted Employers

Employers (including out-of-state employers) that offer minimum essential coverage to any resident of Rhode Island.

Who Reports?

Employers must report unless the insurance carrier for a fully-insured plan completes the reporting on the employer's behalf.

Forms Required

The Division of Taxation will accept federal forms 1095-B and 1095-C if they contain the required information.

Returns that contain the same information described in Section 6055 as that section was in effect as of 12/15/2017 will also be accepted.

Although not explicitly stated, it does not appear that Form 1094 is required.

Filing Requirements

Information Required

Employers must report the following information to the Rhode Island Division of Taxation:

1. Name, address, and TIN of the primary insured;
2. Name, address, and TIN of each other individual obtaining coverage under the policy;
3. The dates during which the individual was covered under MEC during the calendar year; and
4. Other information the Division of Insurance may require.

In addition, employers must report a written statement containing the following to the primary insured employee:

1. Name, address, and contact information of the person required to provide the return to the Division of Insurance; and
2. The information included in the return that is filed with the Rhode Island Division of Taxation.

Acceptable Formats

Employers may submit the same files they submit to the IRS to the Division of Taxation.

Employers may also submit a flat file (i.e., CSV file) containing the same information as the 1095-B.

Ultimately, the state will accept any form or file format that complies with the content requirements outlined above.

A link to the webpage for uploading files will be provided on the Division of Taxation's website at:

<http://www.tax.ri.gov/healthcoveragemandate/>.

Deadlines

Reporting is due annually by January 31.

In November 2021, the Rhode Island Division of Taxation indicated that it would extend the deadline for reporting to the state until March 31, 2022. Link here (look for Adv 2021-45):

<https://tax.ri.gov/guidance/advisories>

(Reporting is still due to individuals by January 31, 2022.)

Penalties

There is currently no penalty specified, but normal state tax penalties may apply.

Resources

More information may be found here: <https://tax.ri.gov/guidance/health-insurance-mandate>

WASHINGTON D.C.

Washington D.C. ("District") signed an individual mandate into law in September 2018 that became effective on January 1, 2019. The first reports to individuals and the state were due, respectively, during the Spring and Summer of 2020.

Impacted Employers

All employers who sponsor self-insured group health plans that covered at least one employee who was a District resident* during the applicable calendar year.

Employers with fully-insured plans that covered at least 50 FT employees, including at least one employee who was a District resident*, during the applicable calendar year.

**For employers offering employment-based health plans, a resident is an individual for whom wages were withheld and paid to the District for any period during the applicable calendar year.*

Who Reports?

If an employer is required to submit a form 1095-B or 1095-C with the IRS, then it must also report to the Office of Tax and Revenue (OTR). It must also furnish a statement about the coverage to the individual covered. **NOTE – The OTR has confirmed via email that the reporting requirement applies to fully-insured employers even if the carrier separately submits reports to the OTR. In other words, employers of fully-insured plans that cover at least 50 employees must report to the OTR and cannot rely on the carrier to fulfill the reporting requirements on their behalf.**

Employers may contract with third parties to report on their behalf. If the employer is a District taxpayer, then it must authorize the third-party service provider to make the filing through MyTaxDC.gov. Otherwise, the third party may register with OTR through MyTaxDC.gov as a bulk filer.

Forms Required

The same forms that are submitted to the IRS should be filed with OTR.

Filing Requirements

Information Required

The same information that is reported on Forms 1094-C, 1095-C, 1094-B and 1095-B is required.

(If an employer chooses to remove information about non-DC residents from its filing, it must file a revised Form 1094 to reflect the revised Form 1095 submission.)

Acceptable Formats

All information returns must be filed electronically with OTR by uploading files through MyTax.DC.gov using OTR's prescribed layouts and file formats.

All files must be a delimited file with an extension of .txt.

No paper filing is permitted. The only option for uploading files is through www.MyTax.DC.gov

Deadlines

For statements to individuals, OTR follows the same deadline as the IRS.

- A separate statement to individuals is not required – compliance with the federal requirements to provide a statement satisfies D.C.'s requirement.

For reporting to OTR, the deadline is 30 days after the IRS deadline for submitting 1095-B or 1095-C forms, including any extensions granted by the IRS.

Penalties

No penalty is imposed for failure to file the informational returns.

Resources

More information may be found here:

<https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/FAQ%20reporting%20SRP%20Update.3.31.20.pdf>

<https://otr.cfo.dc.gov/node/1447081> ("Specifications for Electronically Filing DC Health Care Information Returns for Software Developers and Applicable Entities")