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Employer Reporting – 2018 Draft Forms and Instructions for the 1095/1094

The IRS has released draft forms and instructions for the 2018 calendar year. Not surprisingly, the 2018 forms and instructions are almost identical to those provided for 2017. The only notable change is a small increase in the penalties for failure to report correctly and on time. Previously, the penalty was \$260 per form (capped at \$3,218,500); but for 2018, the penalty is \$270 per form (capped at \$3,275,500).

There have been no legislative or regulatory changes to employer reporting requirements, but the IRS is now actively reaching out to applicable large employers who failed to report, or who appear to be subject to assessments under §4980H. Therefore, employers subject to reporting requirements under §6055 and §6056 should ensure that data is being captured and that appropriate processes are in place for reporting on Forms 1094 and 1095 at the end of 2018.

The draft forms may be found on the IRS draft forms website at <https://apps.irs.gov/app/picklist/list/draftTaxForms.html>

Just enter the form number (i.e., 1094 or 1095) in the search box.

NOTE: The individual mandate is in place through the end of 2018, so coverage reporting under §6055 is still required. For fully insured plans, coverage reporting is handled by the insurance carrier. However, for self-funded plans of all sizes, the employer is responsible for reporting on any individuals covered under the self-funded plan, whether active employees or on COBRA continuation coverage. The reporting for employers offering self-funded coverage is handled either on the Form 1095-B (typically used by small employers) or in Part III of the Form 1095-C (used by applicable large employers).

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