



# Compliance Services Alert

Feb. 19, 2021

## Furloughs, layoffs and COBRA offers: Exploring the ACA reporting

If the COVID-19 pandemic forced your company to take the difficult actions of furloughs or layoffs in 2020, that was challenging enough. Now you have the obligation to provide Affordable Care Act (ACA) reporting forms on many of those employees, and the coding on those forms is a challenge all unto its own. While the IRS was kind enough to extend its "good faith effort" standard to 2020 ACA reporting (meaning if you make a mistake in good faith, the IRS will take your effort into consideration), it's important you do your best to get the coding right on employees' Forms 1095-C, particularly in Part II.

There are a number of factors involved in coding the forms correctly:

- Was the employee furloughed (involuntary leave of absence) or laid off (employment terminated)?
- Was the employee an Affordable Care Act (ACA) full-time employee (FTE) at the time of the furlough or layoff? Was the employee recalled to active service within a few weeks or months?
- What was the employee offered, in the way of coverage (e.g., self-only, family) prior to the furlough or layoff, what coverage did the employee actually elect, and therefore, who received an offer of COBRA if medical plan eligibility was lost upon the furlough or layoff?

### Our fictional employee

For expediency's sake, we're going to demonstrate Form 1095-C coding on a fictional employee who:

- Was an ACA FTE at the beginning of 2020, based on average hours of service over the prior standard measurement period (let's say that period ended Oct. 31, 2019)
- Was offered family coverage at open enrollment, and the coverage was at least minimum value (at least 60% actuarial value)
- Elected that coverage
- Was furloughed or laid off effective June 1, 2020, and remained furloughed or laid off through the end of that year (we'll illustrate near the end of this piece what happens if the employee returned in 2020).

## Coding for months prior to the furlough or layoff

(see also the *Quick Look Grid* at the end of this alert)

There's nothing unusual about the coding for the period prior to the furlough or layoff. For our fictional employee furloughed or laid off effective June 1, for the months of January through May, you'd code line 14 as 1A (if you offered minimum value family coverage, and the self-only cost to the employee was within the federal poverty level affordability safe harbor) or 1E (if 1A does not apply). Line 15 is blank if 1A is on line 14, or – if line 14 is coded 1E – the cost to the employee of the least expensive self-only option offered to the employee.

**Lockton comment:** Line 15 is adjusted for cash opt-out incentives and most wellness program incentives or penalties. That discussion is beyond the scope of this alert.

Line 16 will reflect 2C if the employee enrolled in coverage or, if the employee waived coverage, 2G (or blank) if line 14 is 1A or, where line 14 is 1E, either 2F, G or H if an affordability safe harbor applied to the employee's coverage offer. Line 16 will be blank where a safe harbor does not apply.

## Coding for months after the furlough or layoff

### Employee was furloughed but did not lose eligibility

If you furloughed the employee but the employee remained eligible for coverage at the same employee premium cost share, there is no change to lines 14 or 15. Line 16 might change if, for example, the employee opted out of coverage as the furlough began or shortly after.

**Lockton comment:** Because the employee was an ACA FTE at the time of furlough, the employee remained an ACA FTE for the entire 2020 plan year, as long as the employee remained an employee. Most employer medical plans now hard-wire eligibility to ACA FTE status, and where that was the case, our fictional employee would have remained eligible under the terms of the plan even during the furlough. There is a quirky rule we won't discuss here, under which an employer may begin to treat an ACA FTE as an ACA *part-time employee* after three full months following the employee's change in work hours.

If upon the furlough you asked the employee to pay a larger share of premium, you'd show that adjustment on line 15 (remember, the line 15 number is what you asked an employee to pay for self-only coverage, not necessarily the coverage the employee actually elected).

### Employee was furloughed and lost eligibility

Notwithstanding the fact that our fictional employee remained an ACA FTE during the furlough, some plans actually *do* strip an employee – even an ACA FTE – of eligibility upon a reduction in hours.

**Lockton comment:** That not only triggers a COBRA notice obligation on the employer, but also exposes you to potential ACA employer mandate penalties if the COBRA offer is not "affordable" for ACA purposes, and the employee obtains a federally subsidized individual medical insurance policy in an ACA marketplace.

Interestingly – and this is important – the way the COBRA offer is reported for our *furloughed* employee differs from the way COBRA is reported for an employee who was *laid off*.

For January through May, of course, you report the *family* coverage offer (either 1A or 1E), irrespective of what the employee actually elected at open enrollment.

For reporting the COBRA offer beginning in June, you *reassess* who received an offer, in this case the offer of COBRA coverage. If the employee had not *elected* family coverage at open enrollment, the entire family (employee, spouse and children) is not receiving a COBRA offer. So, beginning in June, you may have to adjust the coverage offer code to reflect who actually received the *COBRA offer*:

- Use 1B on line 14 if only the employee received the COBRA offer (because the employee elected self-only coverage at open enrollment).
- Use 1C on line 14 if the employee and children, but not the spouse, received the COBRA offer (because the employee elected employee-plus-children at open enrollment).
- Use 1D on line 14 if the employee and spouse, but not the children, received the COBRA offer (because the employee elected employee-plus-spouse at open enrollment).
- Use 1E on line 14 if the family (employee, spouse and children) received a COBRA offer. Note that it is unlikely – but possible – that if you used 1A on line 14 for January through May you’ll use 1A for June and later months. 1A would be used if you subsidized the COBRA offer to the extent that the employee-only COBRA rate the employee would have paid would have remained within the ACA’s poverty level safe harbor.

For line 15, make any adjustment to reflect the employee’s cost for self-only COBRA coverage. Use the self-only COBRA coverage cost even though the employee might be offered – and elect – COBRA coverage for the family or for the employee and spouse or children.

**Lockton comment:** If the employer offers multiple coverage options, and the employee is not enrolled in the cheapest, do you report the self-only COBRA cost for the option the employee is enrolled in, or do you report the self-only COBRA cost for the cheapest option the employee could have enrolled in? Reporting the cheapest self-only COBRA cost would be consistent with the way line 15 is handled in the non-COBRA context, but an FAQ on the IRS website could be construed to imply that you use the self-only COBRA rate for the option the employee is enrolled in. It usually will make no difference, as both rates are likely to be “unaffordable” for ACA employer mandate purposes.

For line 16, show 2C if the employee enrolled in COBRA coverage, or leave line 16 blank if the employee waived COBRA. If you subsidized the COBRA coverage cost so that your COBRA offer remained within an ACA affordability safe harbor, show the applicable safe harbor code in line 16.

**Lockton comment:** Some employers subsidized the COBRA offer for a period of months. Where that occurred, the line 15 entry will change for months in 2020 after the subsidy ended.

### **Example of a furlough and COBRA offer**

Let’s say our fictional employee was offered family coverage at open enrollment, but the self-only rate was *not* within the federal poverty level safe harbor. Thus, the line 14 offer code for January through May is 1E instead of 1A. The employee actually *elected* family coverage at open enrollment, so the *family* received the COBRA coverage offer upon the employee’s furlough. Thus, for June through December, you continue to reflect 1E on line 14.

The least expensive self-only coverage cost offered to the employee at open enrollment was \$105.10 per month (let’s assume for this illustration that the amount is not within the federal poverty level safe harbor, so you’re using 1E on line 14 instead of 1A). On line 15, you report \$105.10 for January through May. You offered COBRA coverage to the family, but for line 15 you’re reporting the self-only COBRA rate. Let’s say that’s \$311.17 per month. That’s the number you place on line 15 for June through December, irrespective of what the employee, spouse and/or dependents are paying for COBRA, and indeed irrespective of whether they take COBRA at all.

Let's assume our fictional employee elected COBRA at least for the employee. You will continue to reflect the employee's enrollment in the plan by placing code 2C on line 16.

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)		1E											
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$ 105.10	\$ 105.10	\$ 105.10	\$ 105.10	\$ 105.10	\$ 311.17	\$ 311.17	\$ 311.17	\$ 311.17	\$ 311.17	\$ 311.17	\$ 311.17
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)		2C											

### Employee was laid off and lost eligibility

As we noted above, the layoff – a termination of employment – requires a different approach to the 1095-C coding if the employee had been enrolled in coverage at the time of the layoff. Under nearly all medical plans, a termination of employment triggers a loss of eligibility and thus an opportunity to purchase COBRA if healthcare coverage is lost as a result.

Here the IRS wants you, for ACA reporting purposes, to treat the employee as an ineligible, terminated employee and *ignore the COBRA offer and any COBRA enrollment*.

For line 14, use 1H (no offer) even though you're offering COBRA.

Leave line 15 blank.

For line 16, use 2A (not our employee) *even if the employee remains enrolled through COBRA*.

Thus, using the same facts as in the example above, the 1095-C should look like this:

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)		1E	1E	1E	1E	1E	1H	1H	1H	1H	1H	1H	1H
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$ 105.10	\$ 105.10	\$ 105.10	\$ 105.10	\$ 105.10	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)		2C	2C	2C	2C	2C	2A	2A	2A	2A	2A	2A	2A

**Lockton comment:** Note two things here. First, even though the employee ceased to be your employee on June 1, you need to report all 12 months on the Form 1095-C, Part II. Don't leave line 14 or 16 blank for months after the layoff.

Second, here we're assuming the employee lost coverage effective June 1, due to the layoff. What if the layoff and coverage termination had occurred on May 18? In that event, line 14 for May would also be 1H (no offer for the entire month), line 15 would be blank, but line 16 would be 2B, reflecting a loss of coverage at some point during the month of May.

## Employee returned in 2020

If the employee returned from furlough or layoff in 2020 after having lost eligibility earlier in the year, keep this in mind: If the employee was an ACA FTE when the furlough or layoff occurred, and the employee returns before having gone 13 weeks without a paid hour (26 weeks for educational organizations), that employee *remains an ACA FTE upon return*. That means if you don't renew an affordable, minimum value coverage offer to the employee as soon as you can (first of following month should be soon enough), you're risking an ACA employer mandate penalty.

**Lockton comment:** In other words, be careful about imposing a waiting period upon the employee's return. The plan document might not expressly require the waiting period, but if it does, it means you're delaying a coverage offer to an ACA FTE, and that spells potential trouble under the ACA employer mandate.

On the other hand, if the employee returns after 13 (or 26) or more weeks of no paid hours, you're permitted to treat the employee as a new hire, at least for ACA employer mandate purposes (but check to see how your plan document requires you to deal with the employee). In that event, you continue to report all 12 months on the Form 1095-C, but your coding for months following the employee's return might reflect a renewed coverage offer, or perhaps no coverage offer (1H) on line 14, and a waiting period code (2D) on line 16.

## Reminders

As a reminder, the IRS extended the deadlines for providing Forms 1095-C to ACA FTEs (and others enrolled in self-funded coverage) to March 2; the IRS filing deadline for plans filing electronically is March 31; an automatic 30-day extension can be obtained by submitting Form 8809 by the filing due date. For a full recap of ACA reporting responsibilities and additional commentary and publication on reporting and filing, visit the resources below or contact your Lockton account service team.

- [ACA Reporting webcast replay \(Oct. 2020\)](#)
- [ACA Reporting webcast presentation slides \(Oct. 2020\)](#)
- [ACA Reporting webcast presentation - Appendix slides](#)
- [1095-C coding "cheat sheet"](#)
- [Benefit considerations for furlough, layoff, or paid leave](#)

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# Appendix: Quick-look grid

Situation	Form 1095-C Coding (Part II, lines 14-16)	Notes
<p><b>Furloughed (employment not terminated)</b></p> <p>Employee:</p> <ul style="list-style-type: none"> <li>Was an ACA FTE at the time of furlough (June 1)</li> <li>Remained an ACA FTE through the 2020 plan year</li> <li>Remained eligible through the 2020 plan year (because, for example, the plan ties eligibility to ACA FTE status)</li> </ul>	<p><b>Line 14:</b> Show the coverage offer continued (e.g., 1E, 1A, etc.) for full months during which eligibility continued following the furlough.</p> <p><b>Line 15:</b> If the employee's share of the coverage cost for the cheapest self-only coverage option offered by the employer <i>increased</i> at any point in the furlough, reflect the increased amount for the months to which the increased amount applied.</p> <p><b>Line 16:</b> Show whether the employee was enrolled (2C) or, if waived, whether an affordability safe harbor applied.</p>	<p>See Example 1 below.</p> <p>Where the employer furloughs an employee who at the time of furlough was in a standard or initial stability period for which the employee qualified as an ACA full-time employee, <i>and</i> the medical plan ties eligibility to ACA full-time status, eligibility should continue through that stability period unless the employer applied the "three-month tail" rule (see explanation at end of chart).</p>

**Example 1:** Assumes furlough occurred effective June 1 but the coverage offer continued at the same self-only monthly rate (here, \$105.10) for the remainder of the year.

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)	1E												
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$ 105.10	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)	2C												

**Note:** If the cheapest self-only rate available to the employee increased during the furlough, reflect that on line 15.

<p><b>Furloughed (employment not terminated)</b></p> <p>Employee:</p> <ul style="list-style-type: none"> <li>Was an ACA FTE at the time of the furlough (June 1)</li> <li>Remained an ACA FTE through the 2020 plan year</li> <li>Lost eligibility upon the furlough, under the terms of the plan</li> <li>Was offered COBRA through the end of the year, due to reduction in hours (employee not recalled in 2020)</li> </ul>	<p><b>Line 14:</b> Show the coverage offer continued, albeit on a COBRA basis, for full months following the furlough.<sup>1</sup></p> <p><b>Line 15:</b> Show the self-only COBRA rate. If the employer subsidized the COBRA rate for a portion of the furlough period be sure to show when the COBRA rate to the employee increased due to the termination of the subsidy.</p> <p><b>Line 16:</b> Show whether the employee was enrolled in coverage (2C) or, if coverage was waived, whether an affordability safe harbor (e.g., rate of pay, federal poverty level or W-2) applied. If no safe harbor, leave line 16 blank.</p>	<p>See Example 2 below.</p> <p>Under IRS instructions, when an ACA full-time employee is offered COBRA due to a <i>reduction in hours</i>, such as a furlough, the employer reports the COBRA offer as an offer of coverage on line 14, and the self-only COBRA rate on line 15. Note that the COBRA rate will typically make the coverage offer "unaffordable" for ACA purposes, so if the employee declines COBRA and obtains subsidized coverage in an ACA marketplace, the employer will owe an ACA employer mandate penalty.</p>
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**Example 2:** Employer offered family coverage during open enrollment for 2020. Employee enrolled in family coverage. Cheapest self-only rate for minimum value coverage was \$105.10 per month. Assume furlough occurred effective June 1 (or occurred earlier in May, but active coverage continued through May 31). COBRA was offered to the employee and dependents effective June 1, and the self-only COBRA rate was \$311.17 per month. Employee enrolled in COBRA through the end of the year. *Note:* The employer could have listed 1E and 2C in the "All 12 Months" column.

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)		1E											
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$ 105.10	\$ 105.10	\$ 105.10	\$ 105.10	\$ 105.10	\$ 311.17	\$ 311.17	\$ 311.17	\$ 311.17	\$ 311.17	\$ 311.17	\$ 311.17
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)		2C											

<sup>1</sup> For ease of illustration, this discussion assumes – except where noted – that eligibility as an active employee continued through the end of the month in which the furlough occurred, and that the COBRA offer applied for full months thereafter.

**Note:** If the employee had declined COBRA coverage, line 16 would be blank for June to December, unless the self-only COBRA rate qualified for an affordability safe harbor, which is unlikely.

**Note:** If the employee was offered family coverage at open enrollment, *but only the employee enrolled in coverage*, then a COBRA offer would have been made just to the employee beginning in June. The line 14 coding for June – December would therefore change to 1B. If the employee had enrolled in employee plus children, 1C, or employee plus spouse, 1D.

**Note:** If the employer subsidized COBRA during the furlough, show the subsidized cost to the employee on line 15 for the relevant months.

**Note:** If the employee was recalled during 2020 and offered active coverage, reflect that change for the relevant months.

Situation	Form 1095-C Coding (Part II, lines 14-16)	Notes
<p><b>Laid off (employment terminated)</b> Employee:</p> <ul style="list-style-type: none"> <li>Was an ACA FTE at layoff</li> <li>Was offered COBRA due to termination of employment</li> <li>Was not rehired before the end of the year</li> </ul>	<p><b>Line 14:</b> Show no coverage offer (1H) for full months after the layoff, even though COBRA coverage was offered.<sup>2</sup> See <i>Notes</i> column at right regarding the rehire.</p> <p><b>Line 15:</b> Skip line 15. See <i>Notes</i> column at right regarding the rehire.</p> <p><b>Line 16:</b> Show 2A for full months after the layoff, even if the employee enrolls in COBRA.<sup>2</sup> See <i>Notes</i> column at right regarding the rehire.</p>	<p>See Example 3 below.</p> <p>Under IRS instructions, when an ACA full-time employee is offered COBRA due to a termination of employment, the employer does not report the COBRA offer as an offer of coverage on line 14; instead, reflect no offer (1H), skip line 15, and report “not our employee” (2A) on line 16, even if the employee enrolls in COBRA coverage.</p>

**Example 3:** Employer offered family coverage during open enrollment for 2020. Employee enrolled in family coverage. Cheapest self-only rate for minimum value coverage was \$105.10 per month. Assume layoff occurred May 31 (or occurred earlier in May, but active coverage continued through May 31). COBRA was offered to the employee and dependents effective June 1, and the self-only COBRA rate was \$311.17 per month. Employee (or employee and dependents) enrolled in COBRA through the end of the year.

	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)		1E	1E	1E	1E	1E	1H	1H	1H	1H	1H	1H	1H
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$ 105.10	\$ 105.10	\$ 105.10	\$ 105.10	\$ 105.10	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)		2C	2C	2C	2C	2C	2A	2A	2A	2A	2A	2A	2A

<p><b>Laid off (employment terminated) and rehired in 2020</b> Employee:</p> <ul style="list-style-type: none"> <li>Was an ACA FTE at layoff</li> <li>Employer offered COBRA due to termination of employment</li> <li>Employee was rehired during 2020</li> </ul>	<p><b>Line 14:</b> Show no coverage offer (1H) for full months after the layoff and before the rehire, even though COBRA coverage was offered.<sup>2</sup> See <i>Notes</i> column at right regarding the rehire.</p> <p><b>Line 15:</b> Skip line 15. See <i>Notes</i> column at right regarding the rehire.</p> <p><b>Line 16:</b> Show 2A for full months after the layoff and before the rehire, even if the employee enrolls in COBRA.<sup>2</sup> See <i>Notes</i> column at right regarding the rehire.</p>	<p>Same coding as in Example 3, for months prior to the rehire.</p> <p>If the employee returned after a period of less than 13 weeks (26 for educational organizations) of no paid hours, and during a stability period in which the employee must be treated as an ACA FTE, the employer should re-offer coverage as soon as practicable, i.e., with no waiting period, to avoid a potential penalty. Show the renewed coverage offer on line 14, cheapest self-only cost on line 15, and on line 16 whether the employee was enrolled or, if waived, an affordability safe harbor.</p> <p>If the employee returned after 13 weeks (26 weeks for educational organizations) of no paid hours, the employer may treat the employee as a new hire, for ACA employer mandate and reporting purposes. If the plan so provides the employer may reimpose a waiting period, reflect no coverage offer (1H) on line 14 for the waiting period, leave line 15 blank and reflect 2D on line 16.</p>
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<sup>2</sup> This discussion assumes, for ease of illustration, that eligibility as an active employee continued through the end of the month in which the layoff occurred, and that the COBRA offer applied for full months thereafter. If active coverage ended during the middle of a month, show 1H on line 14 for that month, skip line 15, and show 2B on line 16 for that month.

**Three-month tail rule:** The three-month tail rule allows an employer, where an ACA full-time employee moves to less than full-time status for an indefinite period, to treat the employee as an ACA *part-time* employee (to whom there is no obligation under the ACA employer mandate) beginning on the first day of the month following three full-months of that less-than-full-time status. Where the employer applies this rule – ideally it would be reflected in the plan document – and pulls a coverage offer from the employee after those three months, the employer would then offer COBRA coverage due to the reduction in hours.

While the employer could reflect that coverage offer on line 14, and it would make some sense to do so if the employee were enrolled in COBRA coverage (show 2C on line 16), it might make more sense to reflect no coverage offer (1H) on line 14, leave line 15 blank, and insert code 2B (not a full-time employee) on line 16. That will help avoid an issue later if the employee obtains subsidized coverage in an ACA marketplace, because reporting the COBRA offer will imply to the IRS that the employee was an ACA FTE while buying what will almost certainly be “unaffordable” COBRA coverage. The fact of the employee’s COBRA enrollment will show up on a Form 1095-B, for insured coverage, or in Part III of the Form 1095-C if the coverage is self-insured.