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From the HR Hotline

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Provided by Employco USA, Inc.

- When Is ACA Reporting Due?
- What Employers Are Covered Under the ACA?
- What Events Qualify for HIPAA Special Enrollment Rights?
- We Want to Put an Employee on a Performance Improvement Plan (PIP). Are There Situations Where a PIP Is Unlawful?
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Our HR consultants continue to provide expertise and serve as a valuable resource for navigating the pressing challenges facing employers today. The HR Hotline team fields dozens of questions each day from employers seeking answers to their HR questions.

In recent months, employers have been requesting clarification or seeking guidance on the Health Insurance Portability and Accountability Act (HIPAA) special enrollment rights, Affordable Care Act (ACA) eligibility, employee discipline and rules regarding paid and unpaid breaks. While questions surrounding these topics can vary based on locality, employer and individual circum-stances, federal agencies offer guidance that can aid employers in addressing day-to-day chal-lenges in the workplace.

This article explores questions and answers to common HR situations.

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When Is ACA Reporting Due?

Employers subject to ACA reporting under Internal Revenue Code Sections 6055 or 6056 should prepare to comply with reporting deadlines in early 2025.

For the 2024 calendar year, covered employers must:

- File returns with the IRS electronically by March 31, 2025 (or by Feb. 28, 2025, if filing on paper). Employers that file at least 10 returns during the calendar year must file electronically.
- Ensure that statements are furnished to individuals upon request by Jan. 31 of the year following the calendar year to which the return relates or 30 days after the date of the request, whichever is later. Reporting entities must give individuals timely notice of this option in accordance with any requirements set by the IRS.

Penalties may apply if employers are subject to ACA reporting and fail to file returns by the applicable deadlines or furnish requested statements.

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What Employers Are Covered Under the ACA?

The following employers are subject to ACA reporting:

- Employers with self-insured health plans (Section 6055 reporting)
- Applicable large employers (ALEs) with either fully insured or self-insured health plans (Section 6056 reporting)

ALEs are employers with 50 or more full-time employees, including full-time equivalent (FTE) employees, during the preceding calendar year.

A full-time employee is an individual who works, on average, 30 or more hours of service each week. For this purpose, **130 hours in a calendar month** is treated as the monthly equivalent of 30 hours of service per week. Hours worked by employees with fewer than 30 hours per week must be counted and then divided by 120 per month to determine the number of FTEs. The number of FTEs is then added to the actual full-time employee count.

Note that ALEs with self-funded plans are required to comply with both reporting obligations. However, to simplify the reporting process, the IRS allows ALEs with self-insured plans to use a single combined form to report the information required under both Sections 6055 and 6056.

- Section 6055 applies to providers of minimum essential coverage, such as health insurance issuers and employers with self-insured health plans. These entities generally use Forms 1094-B and 1095-B to report information about the coverage they provided during the previous year.
- Section 6056 applies to ALEs—generally, those employers with 50 or more full-time employees, including full-time equivalents, in the previous year. ALEs use Forms 1094-C and 1095-C to report information relating to the health coverage that they offer (or do not offer) to their full-time employees.

Employers reporting under both Sections 6055 and 6056—specifically, ALEs with self-insured plans—use a combined reporting method by filing Forms 1094-C and 1095-C.

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What Events Qualify for HIPAA Special Enrollment Rights?

Group health plans often provide eligible employees with two regular opportunities to elect health coverage—an initial enrollment period when an employee first becomes eligible for coverage and an annual open enrollment period before the start of each plan year.

Special Enrollment Situations

To make health coverage more portable, HIPAA requires group health plans to provide special enrollment opportunities outside of their regular enrollment periods in certain situations.

Special enrollment must be provided in these situations:

- A loss of eligibility for other health coverage
- Termination of eligibility for Medicaid or a state Children's Health Insurance Program (CHIP)
- The acquisition of a new spouse or dependent by marriage, birth, adoption or placement for adoption
- Becoming eligible for a premium assistance subsidy under Medicaid or a state CHIP

Affected Health Plans

HIPAA's special enrollment rules broadly apply to group health plans and health insurance issuers offering group health insurance coverage. However, certain categories of coverage—called "excepted benefits"—are not subject to HIPAA's special enrollment rules. Excepted benefits include, for example, the following:

- Benefits that are generally not health coverage (such as automobile coverage, liability insurance, workers' compensation, and accidental death and dismemberment coverage)
- Limited-scope dental or vision benefits
- Most health flexible spending accounts

HIPAA also includes an exemption for very small group health plans and retiree-only plans. HIPAA's special enrollment rules do not apply to a plan that, on the first day of the plan year, has fewer than two participants who are current employees.

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Resources

To learn more, check out these resources:

- The U.S. Department of Labor's Compliance Assistance Guide for health benefits, which covers HIPAA special enrollment rights
- Federal regulations regarding HIPAA special enrollment rights
- FAQs regarding special enrollment rights after losing eligibility for individual coverage

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We Want to Put an Employee on a Performance Improvement Plan (PIP). Are There Situations Where a PIP Is Unlawful?

Employee discipline is one of the most challenging aspects of workforce management and can take various forms. One common type of employee discipline is the use of a PIP. A PIP is typically a formal, written document that outlines an employee's performance or behavioral deficiencies, sets forth clear and quantifiable goals, and establishes a timeline by which an employee must successfully complete such goals.

In drafting and implementing a PIP, employers have to contend with a variety of considerations—including mitigating any legal risks and ensuring fair treatment of all employees. Effective practices when creating and carrying a PIP include:

- Establishing a lawful and nondiscriminatory reason for the PIP
- Setting clear and attainable goals
- Drafting an effective PIP with a reasonable timeline
- Effectively communicating the PIP process with the affected employee
- Properly documenting the entire PIP process

Lawful Reasons for a PIP

When determining whether to place an employee on a PIP, it's vital to establish a lawful, valid and nondiscriminatory reason for the PIP. Valid reasons for a PIP may include ongoing performance-related or attendance issues or inappropriate behavior in violation of company policy. However, a PIP may not be appropriate for more severe misconduct (such as violence, sexual harassment or theft) or isolated incidents.

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Unlawful Reasons for a PIP

In all cases, employers may not put an employee on a PIP for any unlawful reason, including the following:

- Due to an employee's protected characteristic, such as those protected under the following laws:
  - Title VII of the Civil Rights Act prohibits discrimination on the basis of race, color, sex (including pregnancy and related medical conditions), national origin and religion
  - The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of an employee's disability
  - The Age Discrimination in Employment Act prohibits discrimination on the basis of age (40 or older)
  - The Genetic Information Nondiscrimination Act prohibits discrimination on the basis of genetic information
  - The Uniformed Services Employment and Reemployment Rights Act (USERRA) prohibits discrimination on the basis of past, current or prospective military service
- Because an employee seeks or takes protected leave, including:
  - Family and Medical Leave Act leave
  - USERRA military leave
  - Workers' compensation leave
  - ADA disability leave
  - Temporary or short-term disability leave (including on the basis of pregnancy)
- Because an employee seeks or obtains a disability, pregnancy or religious accommodation
- In response to protected whistleblowing activities
- In response to union-organizing activity as protected by the National Labor Relations Act
- In response to an employee who sought to enforce their wage rights, including those under the Fair Labor Standards Act

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Reducing Risks

Even if the employer has established a lawful justification for placing an employee on a PIP, employees may take legal action when other circumstances could reasonably suggest the PIP was implemented for unlawful reasons. Such circumstances may include:

- The employee recently requested or received an accommodation for disability, pregnancy, childbirth or a related medical condition, or religious beliefs.
- The employee recently complained of discrimination, retaliation, unfair labor practices, inadequate wages or similar complaints.
- The employee has engaged in union-organizing activity.

To avoid a potential claim of discrimination or retaliation, it is imperative that employers document the lawful, nondiscriminatory reason for placing an employee on a PIP. Specifically, in the event an employee later claims that they were disciplined for any unlawful reason, proper and timely documentation can provide a contemporaneous defense for the employer.

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The Fair Labor Standards Act (FLSA) requires employers to pay their employees for all hours they are "suffered or permitted to work." These hours are known as "work hours" or compensable time. Compensable time includes all hours during which an individual is actually performing productive work and all hours an employee is required by their employer to remain available for the next assignment. The hours an employee is on duty are compensable because the employer effectively controls the employee's time, even when waiting is part of the job or when the employee is allowed to use the time for their own purposes. Compensable time does not include periods where an individual is relieved of all obligations and is free to pursue their own interests.

Rest Periods Under 20 Minutes

Short rest periods, usually 20 minutes or less, are common and customarily counted as hours of work and are, therefore, paid for as working time.

Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that:

- The authorized break may only last for a specific length of time.
- Any extension of the break is contrary to the employer's rules.
- Any extension of the break will be punished.

Meal Periods of 30 Minutes or More

In general, bona fide meal periods (typically 30 minutes or more) need not be compensated as work time.

However, employees must be completely relieved from duty for the purpose of eating regular meals. Employees are not relieved if they are required to perform any duties, whether active or inactive, while eating. Employers may need to count interrupted meal breaks as hours worked and compensate their employees accordingly.

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State and Local Considerations

In addition to complying with the FLSA, employers are required to comply with state and local laws. Many states and jurisdictions have meal and break time standards.

Resources

To learn more, check out these resources:

- U.S. Department of Labor – Meal and Break Periods
- Wage and Hour Division – State Labor Laws

Employers should note that compliance requirements vary by locality, and they should contact local legal counsel for legal advice. We'll keep you apprised of noteworthy updates on these topics. For resources on any of these topics discussed, contact us today.

The HR Hotline can provide general guidance but cannot provide tax advice or review plan documents for compliance.