# **ACA Reporting Requirements**



December 9, 2020 Norbert F. Kugele and Stephanie H. Grant



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- Attorney who specializes in employee benefits and privacy and information security law
- His employee benefits work focuses on health and welfare benefits and the administrative issues associated with them, including COBRA, HIPAA and the Affordable Care Act



# **Stephanie Grant**

- Attorney who specializes in health and welfare benefits, including COBRA, HIPAA and the ACA
- Counsels employers on wellness plans and other employee benefits matters

### **Overview**

### Overview of Reporting Requirements

- Why have reporting
- Status of forms
- Penalties

### **ACA Reporting Examples**

- On-going full time employees
- Newly-hired employees
- Other situations



## Why Are There Reporting Requirements?

- Employer play or pay penalties
- Federal subsidies



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### Reporting Requirements

Reporting coverage under the plan (§ 6055)

- Applies to all medical plans (regardless of size)
- For insured plans: insurers will report (1095-B)
- For multiemployer plans: plan will report (1095-B)
- For employers with self-insured plans: employer will report (1095-C, part III)

Reporting on full-time employees (§ 6056)

- Applies to all "Applicable Large Employers"
- Reports key information used for calculating penalties and determining affordability

### "Applicable Large Employer"

Are you an "ALE" subject to the 6056 reporting requirement?

- An employer that employed an average of at least 50 FTEs on business days during the preceding year
- Includes all "common law" employees

Employers who average 50 or more FTEs per month in 2019 subject to reporting requirement for 2020

### **Identifying Full-Time Employees**

### "Full-time"

- Average at least:
  - 30 hours of service per week; or
  - 130 hours of service per month

### Includes:

- Hours while working; and
- Other hours for which the employee is paid or entitled to pay

### **Identifying Full-Time Employees**

Use same method as for employer responsibility compliance:

- Monthly (after the fact); or
- Use of look-back measurement periods
  - Standard measurement periods for on-going employees (typically 12-months)
  - Initial measurement periods for newly-hired part-time, seasonal, and variable hour employees

# **Counting Hours – Layoffs and Furloughs**

### Layoff (employment terminates)

- Don't count hours after the layoff
- If rehired, need to consider the rehire rules regarding whether employee will be considered a "new" employee or a "continuing" employee
  - Can use either 13-week rule or "rule of parity"

### Furlough (leave of absence)

 Don't count hours when employee is not paid or entitled to payment

### Penalties for Failure to Offer Coverage

The "A" Penalty — Failure to offer coverage to at least 95% of full-time workforce:

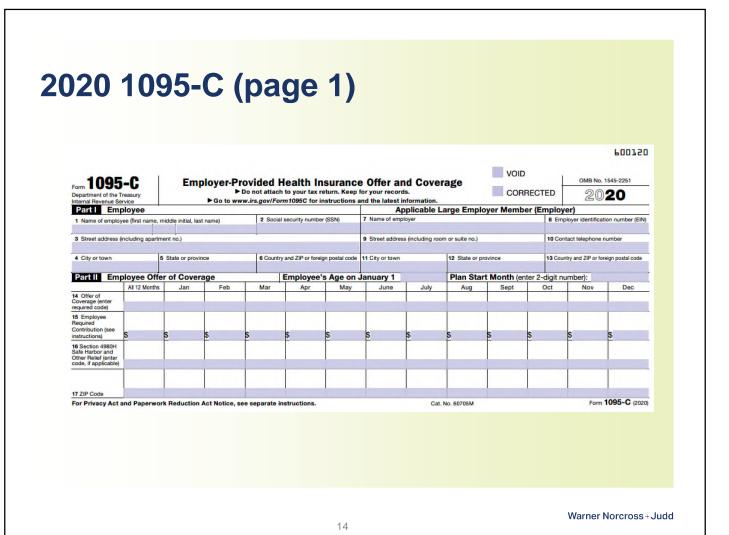
• \$2,570 x (number of full-time employees - 30)

The "B" Penalty — Offer coverage, but some full-time employees qualify for subsidized coverage through exchange

\$3,860 x number of full-time employees who qualify for subsidized coverage

### **IRS Penalty Enforcement**

- IRS enforcement letters (Letter 226J)
  - We do not anticipate a slow down of enforcement
  - Most penalties resulted from reporting errors
  - IRS has been easy to work with to resolve penalty assessments
- IRS Notice 972GC failure to file
  - We are seeing an increase in notices from the IRS claiming ACA forms are incorrect or not timely filed



### 2020 1095-C (page 2)

P00550 Form 1095-C (2020) Page 2

#### Instructions for Recipient

No. are receiving this Form 1095-C because your employer is an Applicable Large Employer subject to the employer shared responsibility provisions in the Affordable Care Act. This Form 1095-C includes information about the health insurance coverage offered to you by your employer. Form 1095-C, Part II, includes information about the the coverage, if any, your employer offered to you and your spouse and dependent(s). If you purchased health insurance coverage through the Health insurance Marketplace and wish to claim the premium tax credit, this information will uses it you in determining whether you are eligible. For more information about the premium tax credit, the information will uses it you in determining whether you are eligible. For more information about the premium tax credit, the information will use the young the property of the property of



Employers are required to furnish Form 1095-C only to the employee, As the recipient of this Form 1095-C, you should provide a copy to any family members covered under a self-insured employer-sponsored plan listed in Part III if they request if for their records.

Additional information. For additional information about the tax provisions of the Affordable Care Act (ACA), including the individual shared responsibility provisions, the premium tax credit, and the employer shared responsibility provisions, visit www.irs.gov/ACA or call the IRS Healthcare Hotline for ACA questions (800-919-0452).

#### Part I. Employee

Lines 1-6. Part I, lines 1-6. reports information about you, the employe

Line 2. This is your social security number (SSN). For your protection, this form may show only the last four digits of your SSN. However, the employer is required to report your complete SSN to the IRS.

#### Part I. Applicable Large Employer Member (Employer) Lines 7-13. Part I, lines 7-13, reports information about your employer.

Lines 2 - This in interest = 1.5, report internation about your employer. Line 10. This includes a telephone number for the person whom you may call if you have questions about the information reported on the form or to report errors in the information on the form and ask that they be corrected.

#### Part II. Employer Offer of Coverage, Lines 14-17

Line 14. The codes listed below for line 14 describe the coverage that your employer offered to you and your spouse and dependent(s), if any, (if you received an offer of coverage through a multiemployer plan due to your membership in a union, that offer may not be shown on line 14.) The information on line 14 relates to elligibility for coverage subsidized by the premium tax credit for you, your spouse, and dependent(s). For more information about the premium tax credit, see Pub. 974.

1A. Minimum assential coverage providing minimum value offered to you with an employee required contribution for self-only coverage equal to or less than 9.5% (as adjusted) of the 48 configuous statisingle federal powerly line and minimum assential coverage offered to over souce and dependent(s) (referred to here as a Qualifying Offer). This code may be used to report for specific months for which Qualifying Offer for all 12 months of the calendar year. For information on the adjustment of the 9.5%, visit (RS,gov.).

1B. Minimum assential coverage providing minimum value offered to you and minimum assential coverage NOT offered to your spouse or dependent(s).

1C. Minimum assential coverage providing minimum value offered to you and minimum essential coverage offered to your dependent(s) but NOT your spouse.

1D. Minimum assential coverage providing minimum value offered to you and minimum essential coverage offered to your spouse but NOT your dependent(s).

1E. Minimum essential coverage providing minimum value offered to you and minimum essential coverage offered to your dependent(s) and spouse.

1F. Minimum essential coverage NOT providing minimum value offered to you, or you and your spouse or dependent(s), or you, your spouse, and dependent(s).

16. You were NOT a full-time employee for any month of the calendar year but were enrolled in self-insured employer-sponsored coverage for one or more months of the calendar year. This code will be enferted in the All 12 Months box or in the separate monthly boxes for all 12 calendar months on line 14.

line 14.

No offer of coverage (you were NOT offered any health coverage or you were offered coverage that is NOT minimum essential coverage).

11. Reserved for future use.

13. Minimum essential coverage providing minimum value offered to you: minimum essential coverage conditionally offered to your spouse, and minimum essential coverage NOT offered to your dependent(s).

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It. Minimum essential coverage providing minimum value offered to you; minimum essential coverage conditionally offered to your spouse; and minimum essential coverage offered to your dependently).

It. Individual coverage health reimbursement arrangement (HRA) offered to you only with affordability determined by using employes's primary residence location 2IP code.

determined by using employee's primary residence location ZIP code.

Mit Individual coverage HRA offered to you and dependent(s) (ort spouse) with affordability determined by using employee's primary residence location ZIP code.

N. Individual coverage HRA offered to you, spouse and dependent(s) with affordability determined by using employee's primary residence location ZIP code.

Ol. Individual coverage HRA offered to you only using the employee's primary employment site ZIP code affordability safe harbor.

Pt. Individual coverage HRA offered to you and dependent(s) (not spouse) using the employee's primary employment site ZIP code affordability safe harbor.

Ol. Individual coverage HRA offered to you, spouse and dependent(s) using the employee's primary employment site ZIP code affordability safe harbor.

Rt. Individual coverage HRA that is NOT affordability cafe harbor.

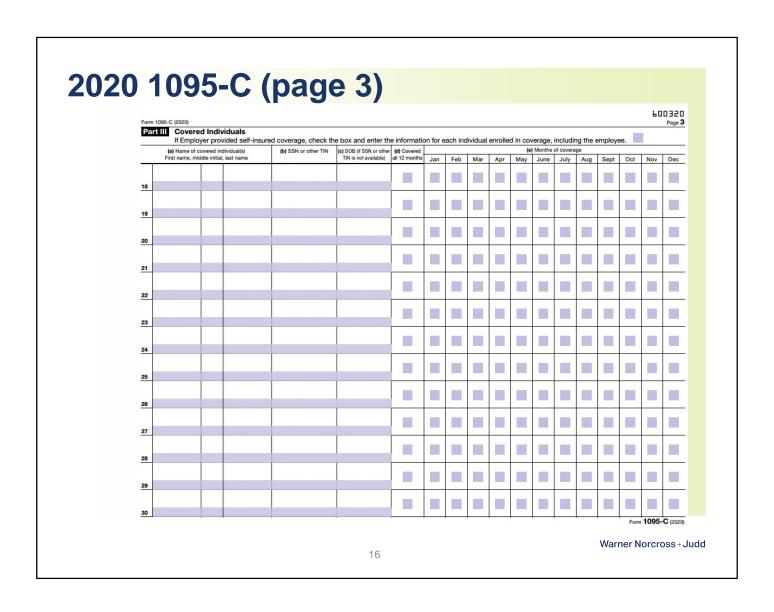
Rt. Individual coverage HRA that is NOT affordability employment site ZIP code affordability as harbor.

St. Individual coverage HRA that is NOT affordability and primary employment site ZIP code affordability and primary employment site.

St. Individual coverage HRA offered to an individual who was not a full-time employee.

18. Individual coverage HRA offered to an individual who was not a full-time employee

18. Individual coverage HRA
1T. Reserved for future use.
1U. Reserved for future use.
1V. Reserved for future use.
1W. Reserved for future use.
1X. Reserved for future use.
1Y. Reserved for future use.
1Z. Reserved for future use.



### 2020 1095-C (page 4)

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#### Instructions for Recipient (continued)

Instructions for Recipient (continued)

Line 15. This line reports the employee required contribution, which is the monthly cost to you for the lowest-cost self-only minimum essential coverage providing minimum value that your employer offered you. For an individual coverage HRA, the employee required contribution is the excess of the monthly premium based on the employee's applicable age for the applicable lowest cost silver plan over the monthly individual coverage HRA amount (generally, the annual individual coverage HRA amount divided by 12. See the Instructions for Forms 1094-C and 1095-C for more details. The amount reported on line 15 may not be the amount you paid for coverage lif, for example, you chose to enroll in more expensive coverage such as family coverage. Line 15 will show an amount only if code 18. [C, 10, 1E, 1J, 1K, 1L, 1M, 1N, 10, 1P, or 10 is entered on line 14. If you were offered coverage but there is no cost to you for the coverage, this line will report "0.00" for the amount. For more information, including on how your eligibility for other healthcare arrangements might affect the amount reported on line 15, visit IRS.gov.

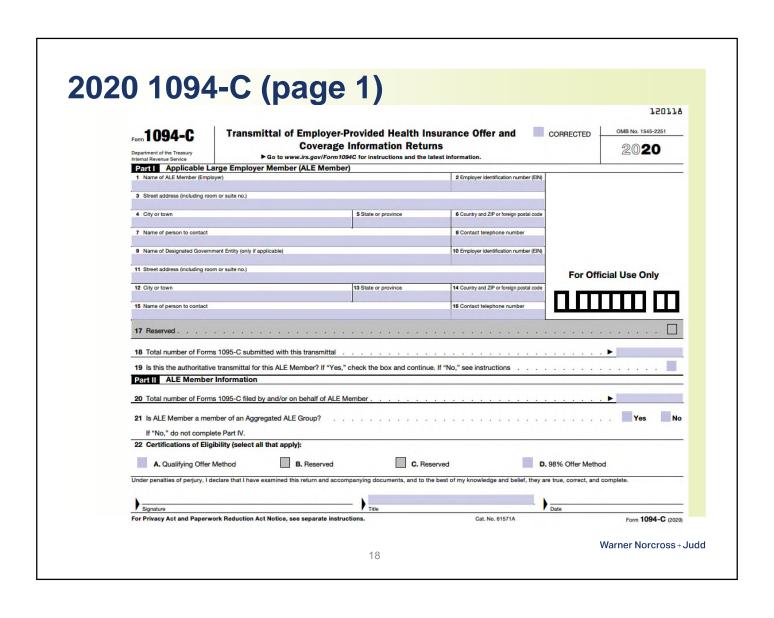
line 15, visit in ago.

Line 16. This code provides the IRS information to administer the employer shared responsibility provisions. Other than a code 20, which reflects your enrollment in your employer's coverage, none of this information affects your eligibility for the premium tax credit. For more information about the employer shared responsibility provisions, visit IRS.gov.

Line 17. This line reports the applicable ZIP code your employer used for determining affordability if you were offered an individual coverage HRA. If code 1L, 1M, or 1N was used on line 14, this will be your primary residence location. If code 10, 1P, or 10 was used on line 14, this will be your primary work location. For more information about individual coverage HRAs, visit IRS.gov.

#### Part III. Covered Individuals, Lines 18-30

Part III reports the name, SSN (or TIN for covered individuals other than the employee listed in Part I), and coverage information about each individual (including any full-time employee and non-full-time employee, and any employee's family members) covered under the employer's health plan, if the plan is "sell-insured." A date of birth will be entered in column (c) only if an SSN (or TIN for covered is "self-under that the furth between the self-under the self-unde months for which these individuals were covered.



# 2020 1094-C (page 2)

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art	III ALE Member						
		(a) Minimum Essential Coverage Offer Indicator		(b) Section 4980H Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Reserved
		Yes	No	Employee Count for ALE Member	IOI FILE WEITIDE	Group indicator	
23	All 12 Months						
24	Jan						
25	Feb						
26	Mar						
27	Apr		-				
28	Мау						
29	June						
30	July						
31	Aug						
32	Sept					-	
33	Oct					-	
34	Nov						
35	Dec						

Form 1094-C (2020)

### 2020 1094-C (page 3) Part IV Other ALE Members of Aggregated ALE Group Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year). Form 1094-C (2019)

### When to Report?

Reporting to Individuals (1095-B and 1095-C)

- IRS extended deadline from January 31, 2021 to March 2, 2021 (IRS Notice 2020-76)
  - No extension from this date
- No penalty for failure to distribute 1095-B (and 1095-C to part-time employees) if:
  - Prominent website notice that form is available
    - Notice must include email address, physical address and telephone number
  - Provide a 1095-C within 30 days of receiving request
  - Must still file forms with IRS; must still distribute 1095-C to full-time employees.

### Transmittal Forms to IRS (1094-B or 1094-C)

- March 1, 2021 if paper filing (Feb. 28 falls on a Sunday)
- Deadline extended until March 31<sup>st</sup> if filed electronically
  - Must be filed electronically if required to file at least 250 forms
  - Automatic 30-day extension available.

### Penalties for Noncompliance

- Failure to file with IRS or furnish statements to individuals
  - \$280 for each statement, annual cap of \$3,426,000
  - Intentional disregard of filing requirements: fine doubles and no annual cap
  - NOTE: No penalties for not providing 1095-B to individuals if certain conditions met (IRS Notice 2020-76)
- "Good faith" relief from filing penalties per IRS Notice 2020-76
  - Only applies to incorrect/incomplete information returns
  - Does not apply to late filings
  - Does not provide relief from ACA penalties under 4980H

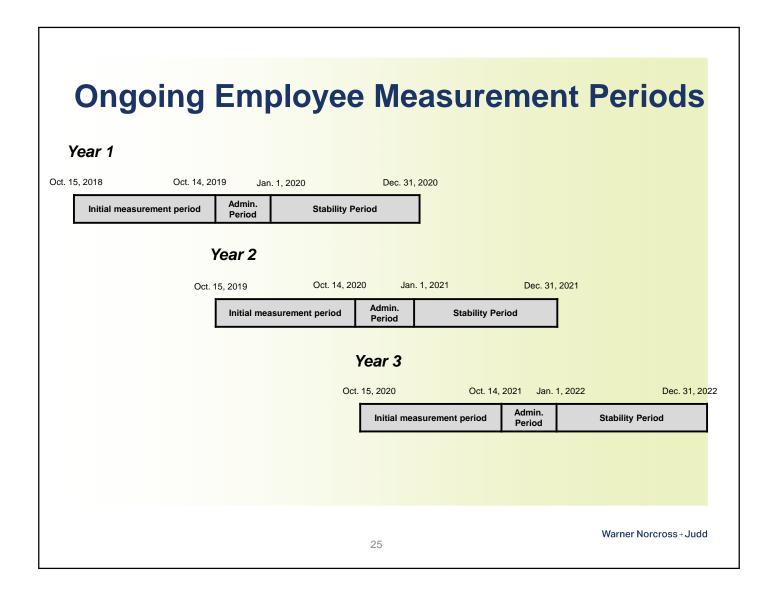


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### **On-Going Full-Time Employees**

### Reporting Issues:

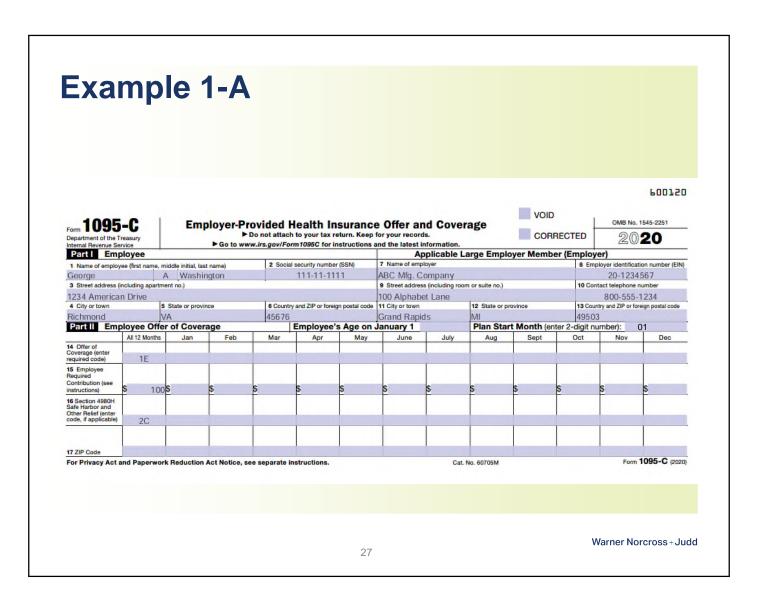
- Month-to-month method:
  - Employee counts as full-time any month that he or she works 130 or more hours
- Look-back measurement method:
  - Employee counts as full-time during stability period that follows standard measurement period

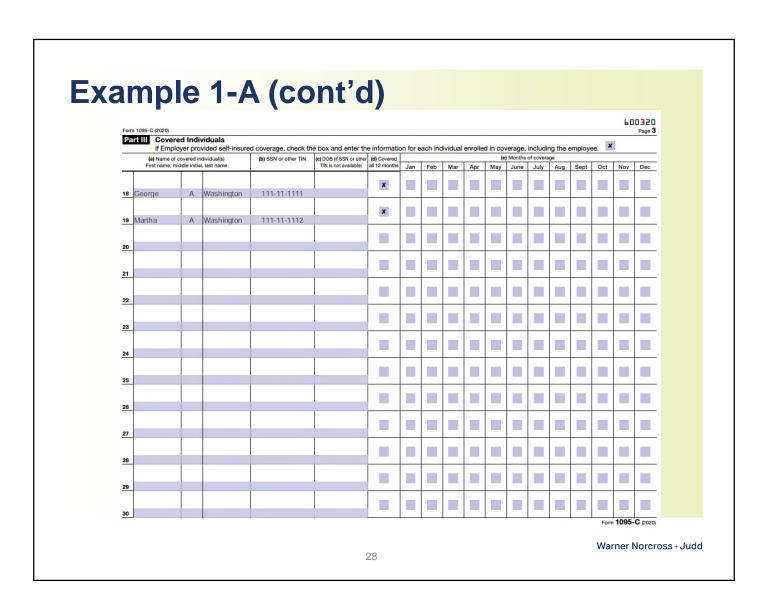


### **Example 1-A**

Full-time employee who worked all year and was covered all year:

- Offer of coverage meets minimum value
- Offer of coverage to spouse and dependents
- Monthly cost of individual coverage: \$100
- Employee elects to cover spouse
- Plan year: January 1 December 31

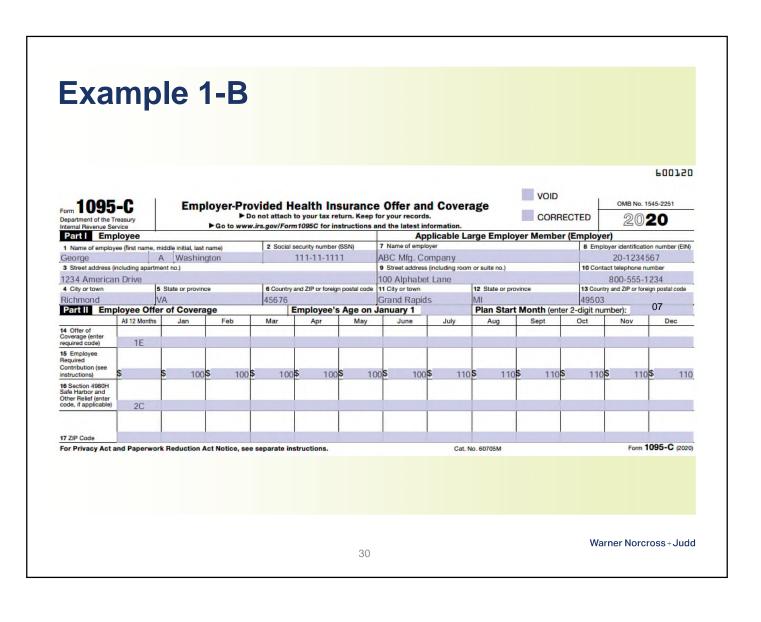


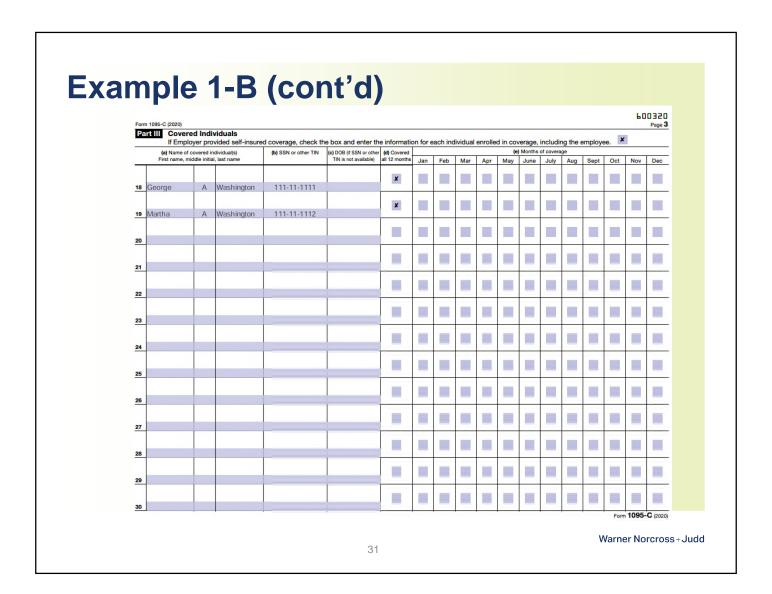


### **Example 1-B**

Full-time employee who worked all year and was covered all year:

- Offer of coverage meets minimum value
- Offer of coverage to spouse and dependents
- Monthly cost of individual coverage: \$100
- Employee elects to cover spouse
- Plan year: July 1 June 30
  - Increase in employee contribution on July 1

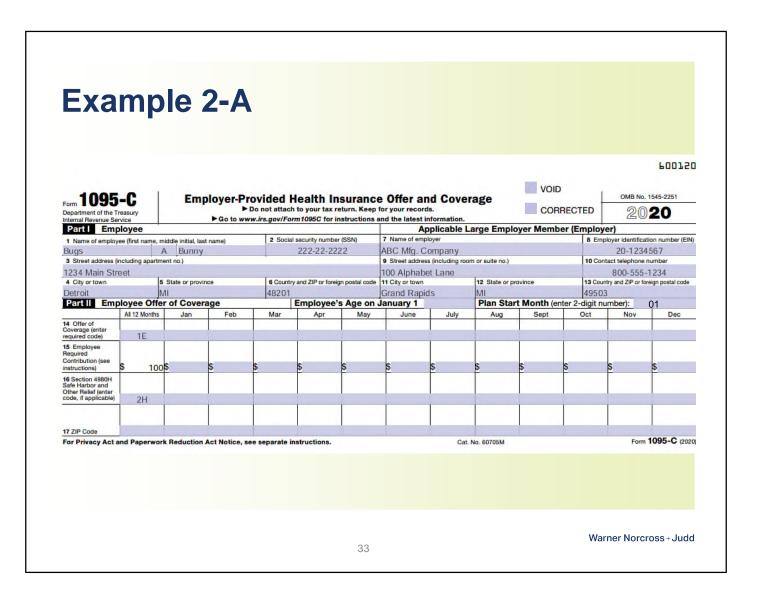




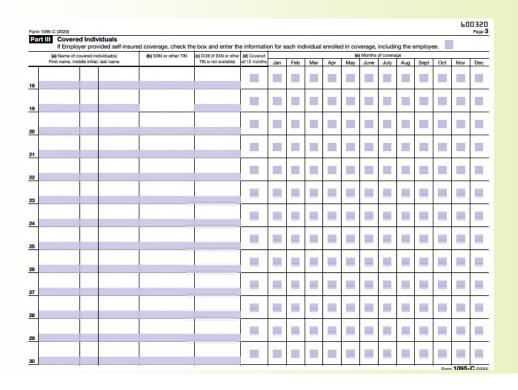
### **Example 2-A**

Full-time employee who worked all year, was offered but declined coverage:

- Offer of coverage meets minimum value
- Offer of coverage to spouse and dependents
- Employee works 40 hours per week
- Monthly cost of individual coverage: \$100
  - Deductions taken twice a month: \$50 per check
- Affordability safe harbor: rate of pay method
  - Employee makes \$10 per hour
  - \$10 x 130 hrs = \$1,300; \$1,300 x .0978 = \$127.14
- Plan year: January 1 December 31



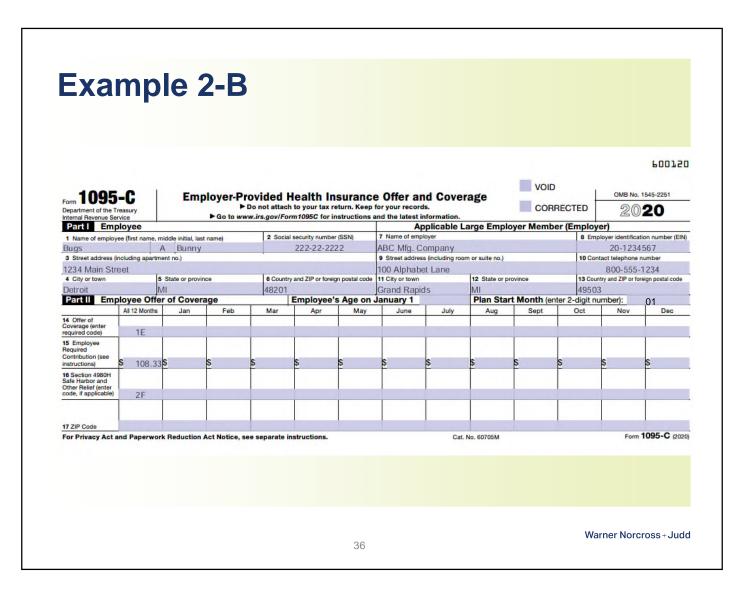
# **Example 2-A (cont'd)**

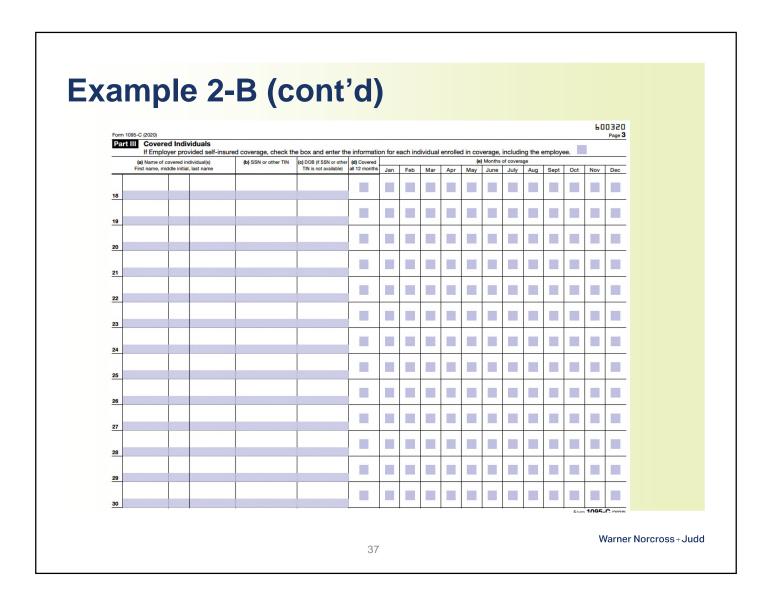


### **Example 2-B**

Full-time employee who worked all year, was offered but declined coverage

- Offer of coverage meets minimum value
- Offer of coverage to spouse and dependents
- Employee works 40 hours per week
- Cost of individual coverage: \$50 per pay period
  - 26 pay periods during calendar year
  - \$1,300 annual cost
- Affordability safe harbor: W-2 method
  - \$19,500 taxable income for year
  - $$19,500 \times .0978 = $1,907.10$
- Plan year: January 1 December 31

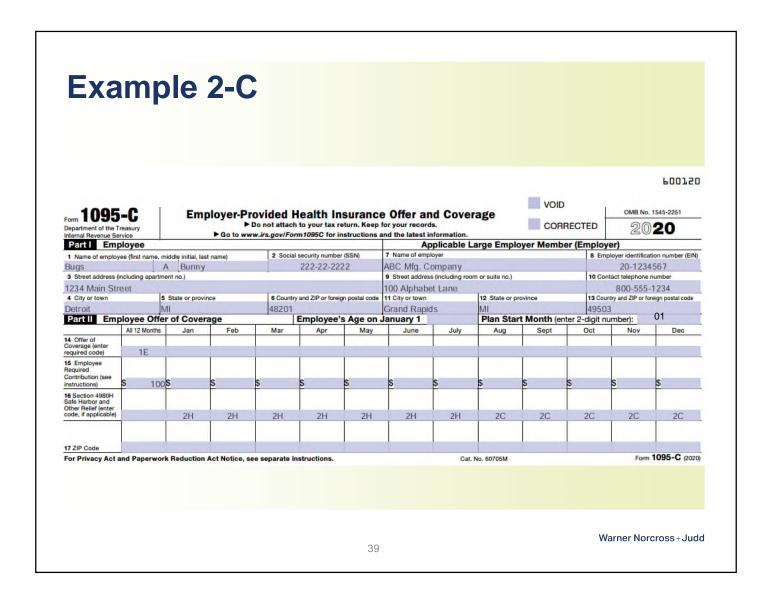


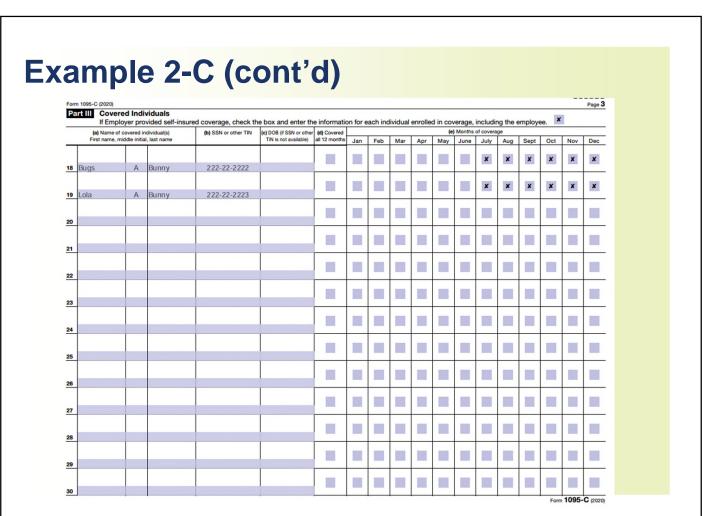


## **Example 2-C**

Full-time employee who declined coverage but experiences mid-year status change

- Offer of coverage meets minimum value
- Offer of coverage to spouse and dependents
- Employee works 40 hours per week.
- Monthly cost of individual coverage: \$100
  - Deductions taken twice a month: \$50 per check
- Gets married on 7/15/20
- Plan year: January 1 December 31



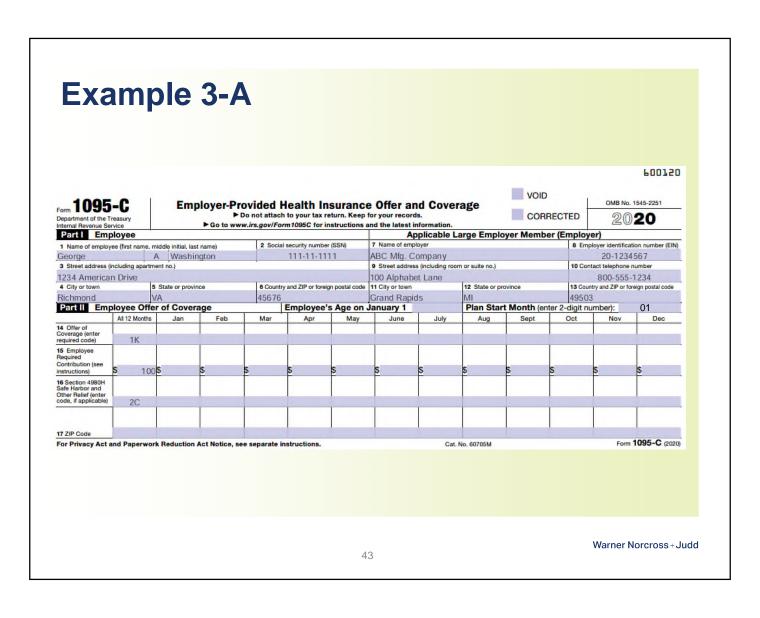


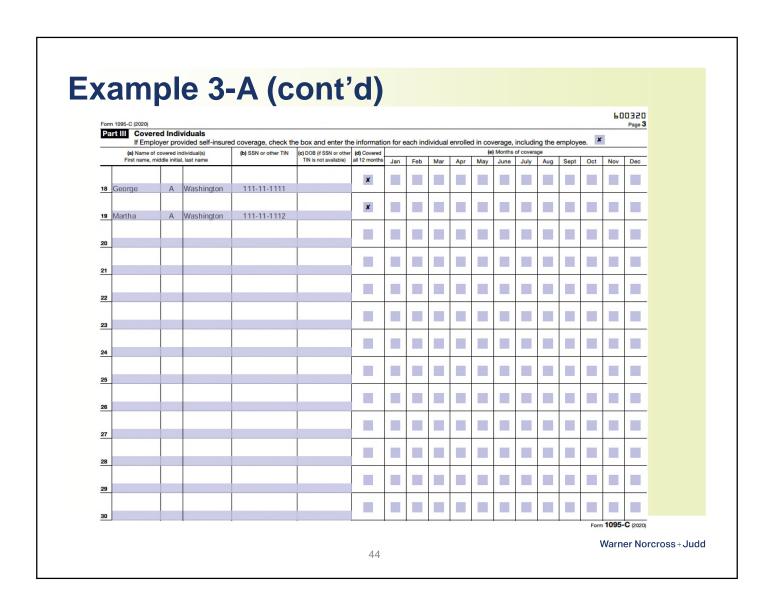


## **Example 3-A**

Full-time employee who worked all year and was covered all year

- Offer of coverage meets minimum value
- Offer of coverage to dependents and to spouse so long as spouse not eligible for other group health plan by another employer
- Monthly cost of individual coverage: \$100
- Employee elects to cover dependent and spouse
- Plan year: January 1 December 31

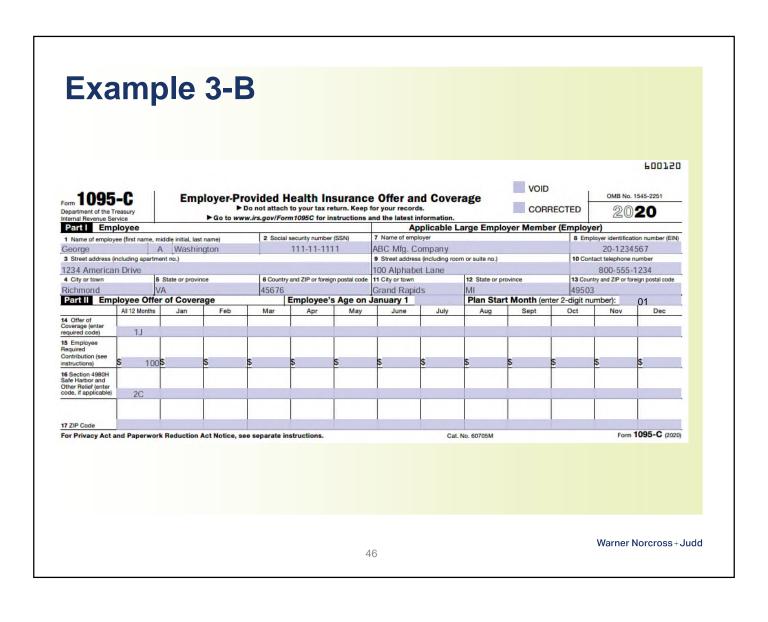


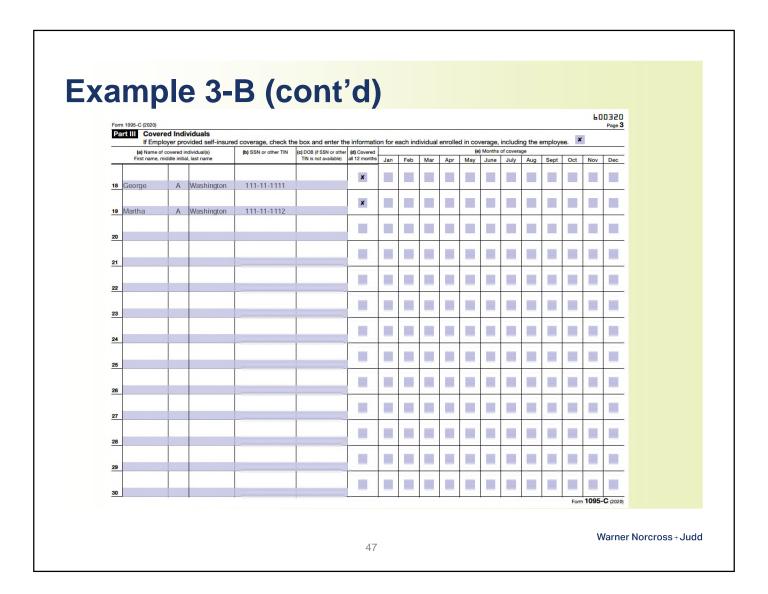


## **Example 3-B**

Full-time employee who worked all year and was covered all year

- Offer of coverage meets minimum value
- Offer of coverage to spouse so long as spouse not eligible for other group health plan by another employer, but no offer of coverage to dependents
- Monthly cost of individual coverage: \$100
- Employee elects to cover spouse
- Plan year: January 1 December 31



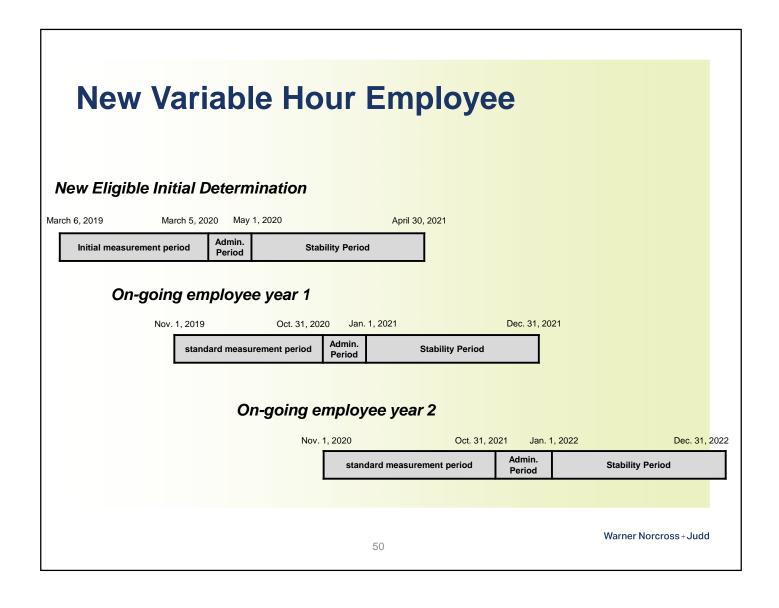




# **Newly Hired Employees**

#### Issues:

- Month-to-month method:
  - Employee counts as full-time any month that he or she works
     130 or more hours
- Look-back-measurement method:
  - If expected to work full-time:
    - Until completes a standard measurement period, count as full-time during months he or she works 130 or more hours
  - If part-time, variable hour, or seasonal: initial measurement period of up to 12 months



#### **Limited Non-Assessment Periods**

## Applies to certain waiting periods

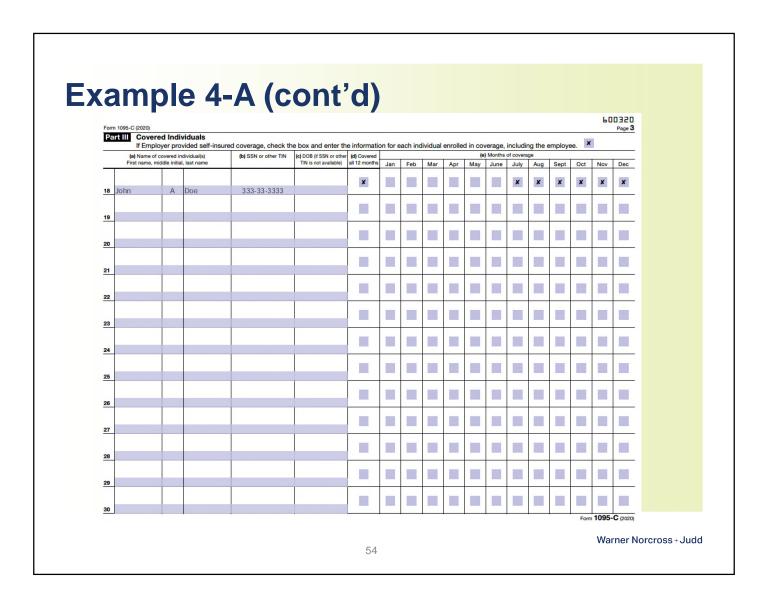
- First calendar month of hire (if not hired on first day of month)
- First three full calendar months of employment
- For part-time, variable hour and seasonal employees, during initial measurement period and administrative period but only if "otherwise eligible for coverage"

## **Example 4-A**

## Newly Hired Employee

- Hired to work a <u>full-time</u> schedule
- Date of hire: April 15, 2020
- Eligible for minimum value coverage for employee, spouse and dependents on July 1, 2020
- \$100/month for single coverage
- Employee enrolls in single coverage

#### **Example 4-A** VOID OMB No. 1545-2251 Form 1095-C **Employer-Provided Health Insurance Offer and Coverage** ▶ Do not attach to your tax return. Keep for your records. CORRECTED 2020 ► Go to www.irs.gov/Form1095C for instructions and the latest information Part I Employee Applicable Large Employer Member (Employer) 7 Name of employer 2 Social security number (SSN) 8 Employer identification number (EIN) 1 Name of employee (first name, middle initial, last name) 333-33-3333 ABC Mfg. Company 20-1234567 3 Street address (including apartment no.) 9 Street address (including room or suite no.) 10 Contact telephone number 456 Unknown Drive 100 Alphabet Lane 800-555-1234 5 State or province 6 Country and ZIP or foreign postal code 12 State or province 13 Country and ZIP or foreign postal code Anywhere 46789 Grand Rapids 49503 Employee's Age on January 1 Part II Employee Offer of Coverage Plan Start Month (enter 2-digit number): All 12 Months May Dec 14 Offer of Coverage (enter required code) 01 1H 1H 1H 1H 1H 1E 15 Employee Required Contribution (see 100\$ 100\$ 100\$ 100\$ instructions) 16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable) 2A 2A 2A 2D 2D 2D 2C 2C 2C 2C 2C 2C Form 1095-C (2020) For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 60705M Warner Norcross+Judd



## **Example 4-B**

### **Newly Hired Employee**

- Hired to work a variable/part-time schedule
  - Employer uses look-back measurement method
  - Uses initial measurement period starting on first day of month following or coinciding with date of hire
- Date of hire: March 15, 2020
- Eligible for minimum value coverage for employee, spouse and dependents on May 1, 2021 if averages at least 30 hours of service per week

# **Example 4-B**

No need to issue a 1095-C to this employee.

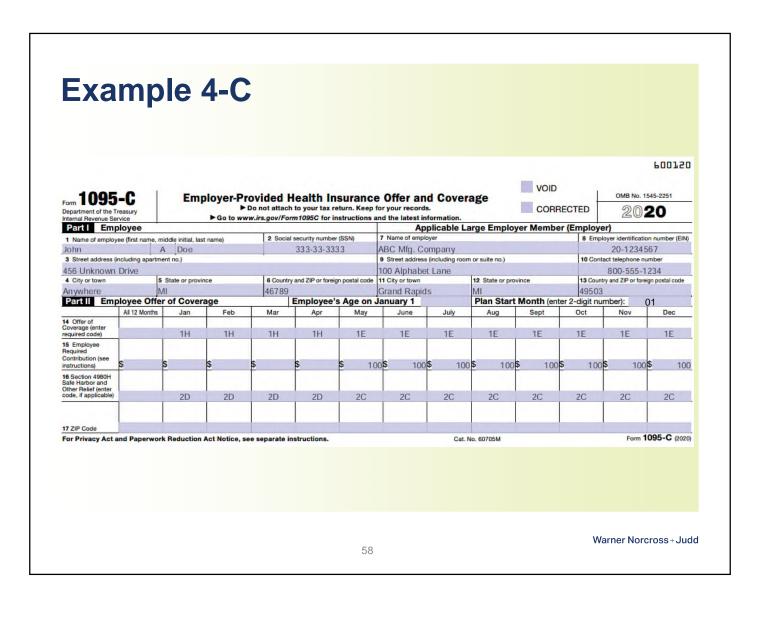
- Is not classified as a FT employee during any month in 2020
- Is not enrolled in coverage during any month in 2020

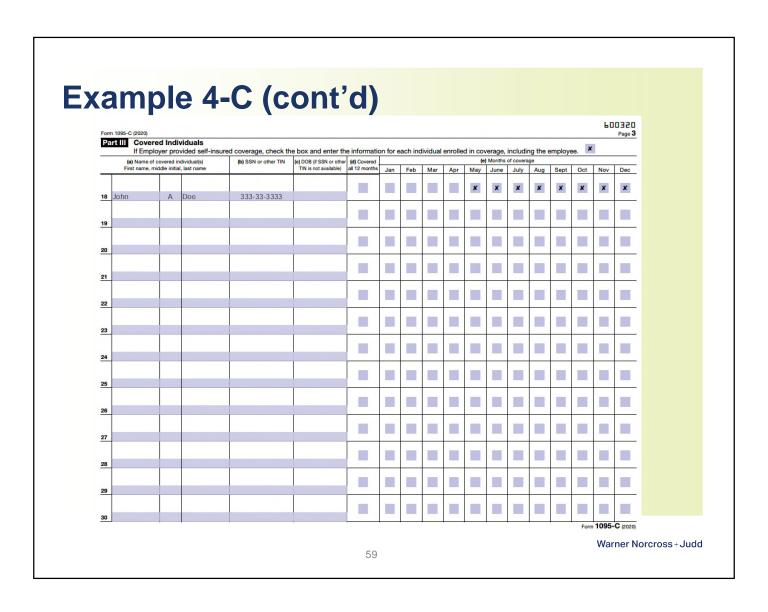


## **Example 4-C**

## **Newly Hired Employee**

- Hired to work a variable/part-time schedule
  - Employer uses look-back measurement method
  - Uses initial measurement period starting on first day of month following or coinciding with date of hire
- Date of hire: March 15, 2019
- Eligible for minimum value coverage for employee, spouse and dependents on May 1, 2020 if averages at least 30 hours of service per week
- Employee averages over 30 hours of service per week and enrolls in single coverage
- \$100/month for single coverage

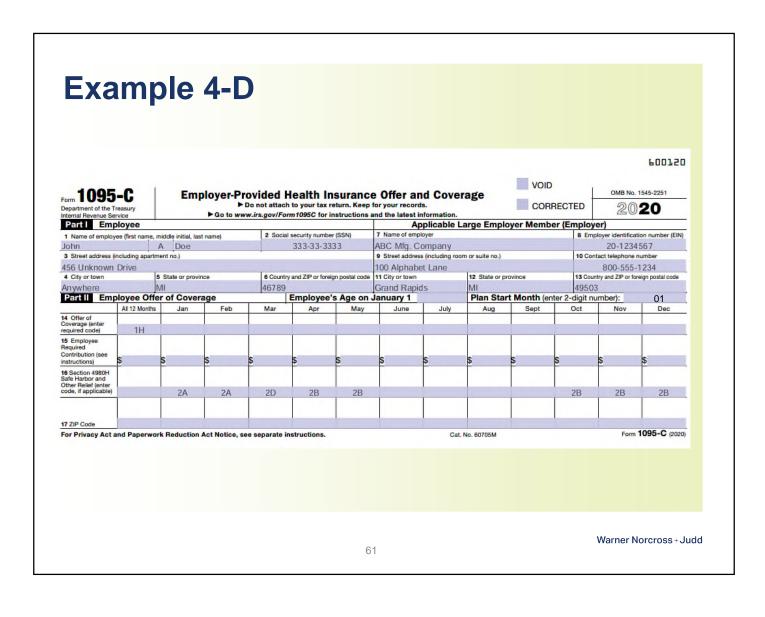


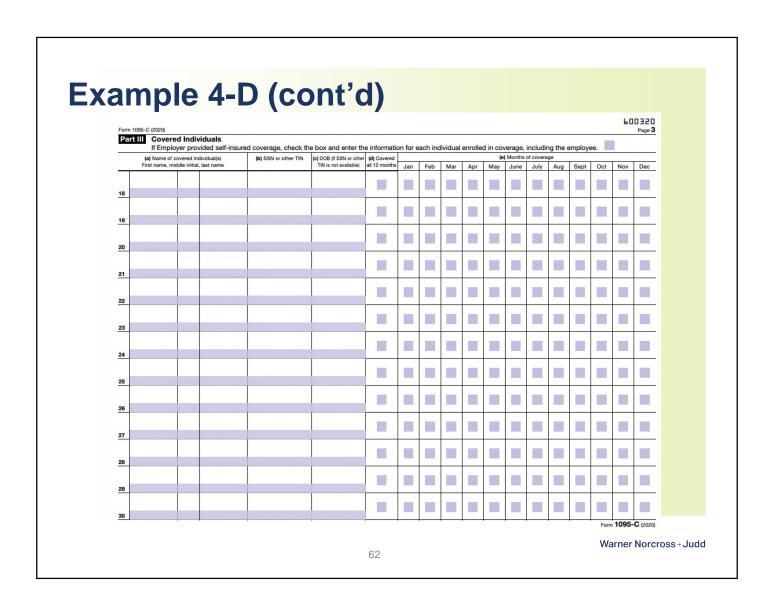


## **Example 4-D**

#### **Newly Hired Employee**

- Hired to work a part-time schedule
  - Employer uses look-back measurement method
  - Uses initial measurement period starting on first day of month following or coinciding with date of hire
- Date of hire: March 15, 2020
  - Works 25 hrs per week March, April, May
  - Works 35 hrs per week June, July, August, Sept
  - Works 20 hrs per week October, November, December
- Employee classified as not eligible for coverage



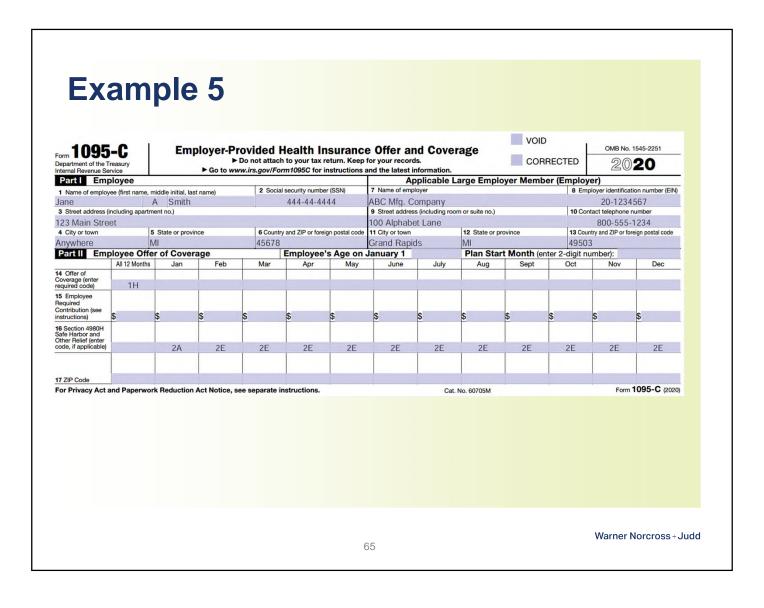


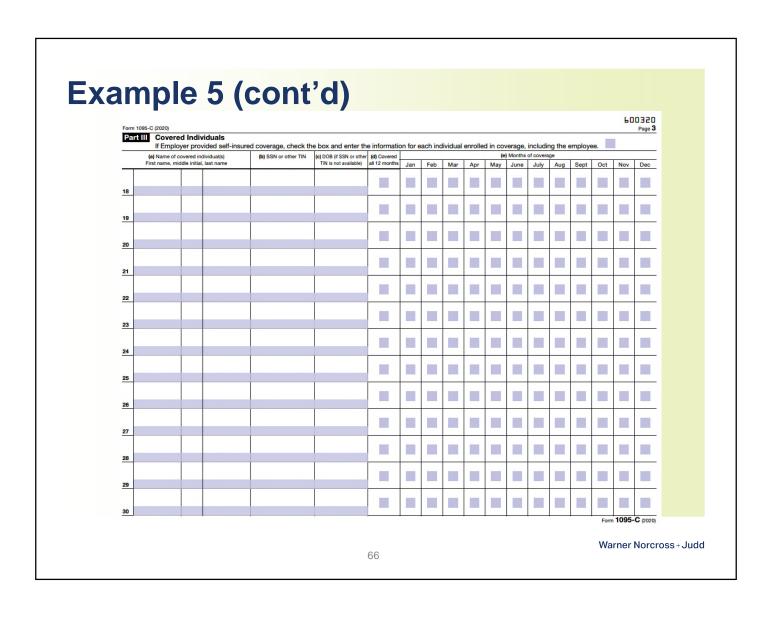


## **Example 5**

Collectively-bargained employee covered under union plan

- Employee hired on 2/15/20, expected to work full-time
- CBA requires employer to contribute \$X per hour worked to a multi-employer plan
  - Plan provides affordable, minimum value coverage to eligible employees and their children
  - Eligibility based on number of hours for which contributions were made in 2020
- Multi-employer plan does not report to employer the specific months for which employee is eligible

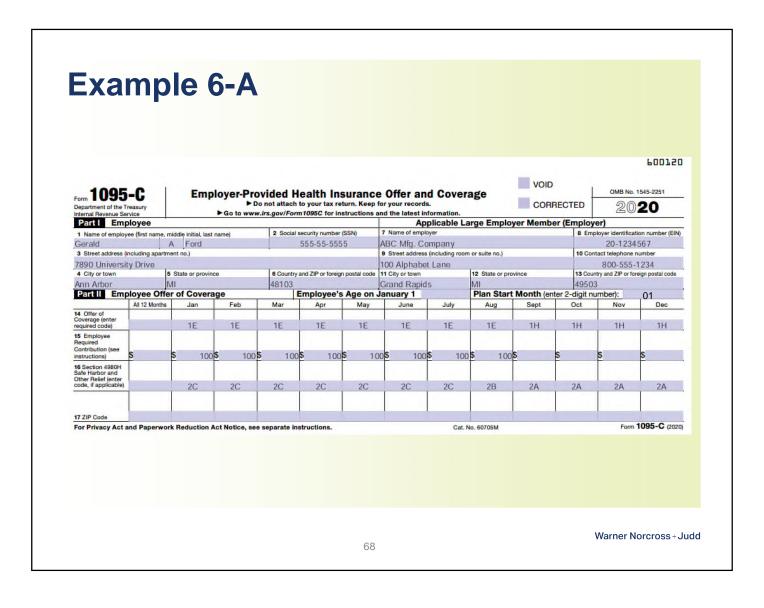


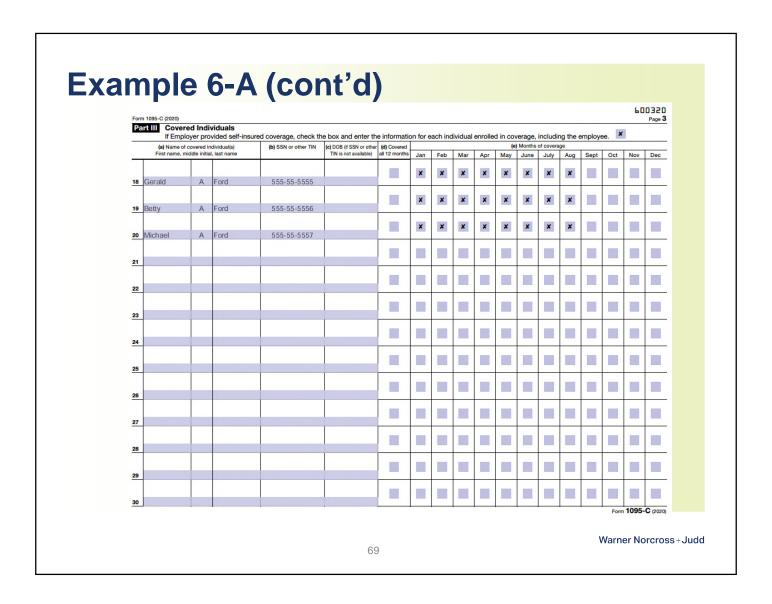


## **Example 6-A**

#### Full-time employee terminates mid-year

- Employer uses look-back measurement method to determine full-time status
- Date of termination: 8/15/20
- Monthly cost of coverage: \$100
- Eligible for minimum value coverage for employee, spouse and dependents through date of termination
  - Would have continued to be eligible if had not terminated employment
- \$100/month for single coverage
- Employee had enrolled self, spouse and child in coverage

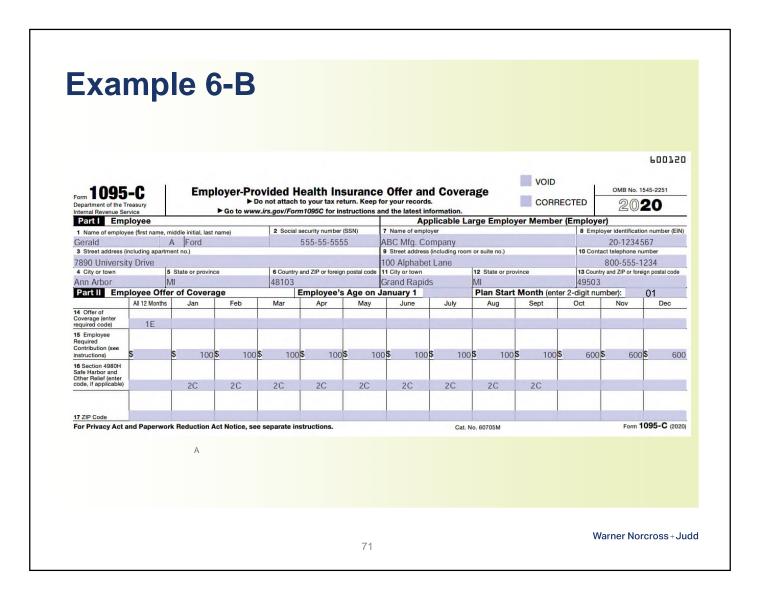


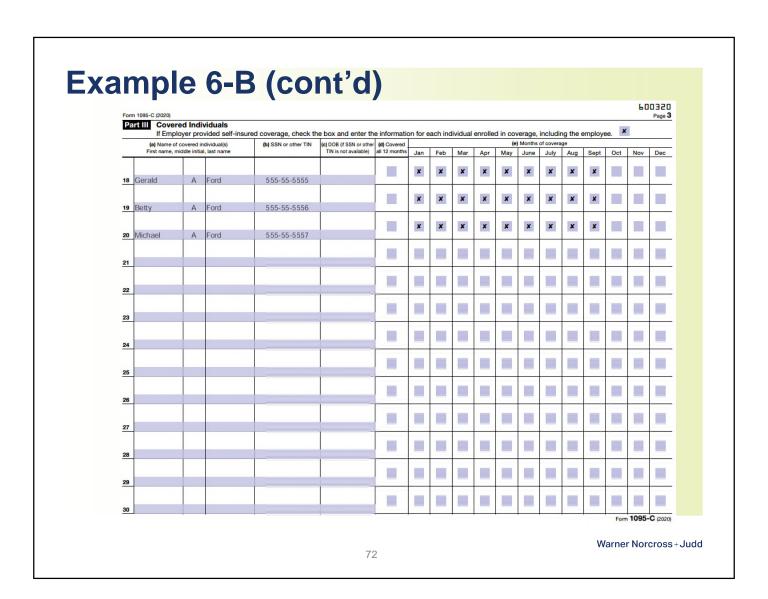


## **Example 6-B**

Full-time on-going employee transfers to part-time position mid-year

- Employer uses look-back measurement method to determine full-time status, but not for eligibility purposes
- Part-time employees ineligible for coverage
- Date of part-time transfer: 10/1/20
- Monthly cost of single coverage: \$100
  - Monthly COBRA premium for single coverage: \$600
- Eligible for minimum value coverage for employee, spouse and dependents through date of transfer
- Employee had enrolled self, spouse and child in coverage
- Employee does not elect COBRA

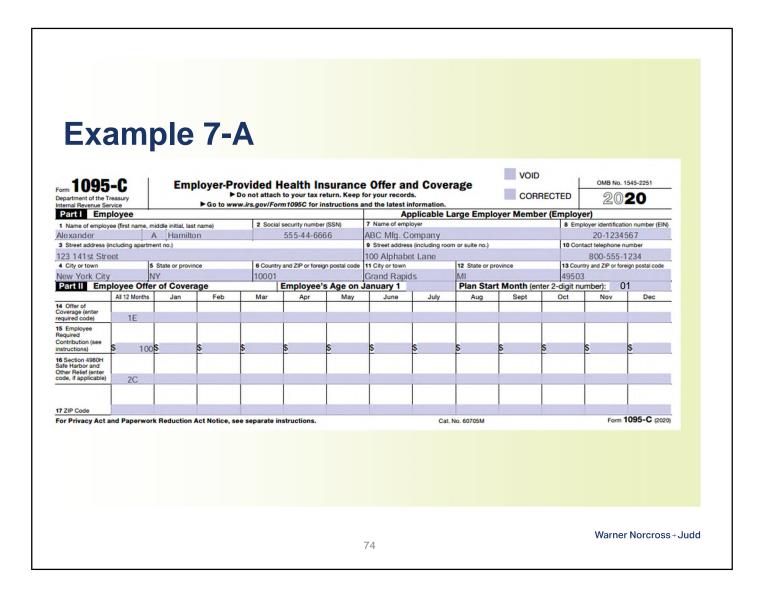


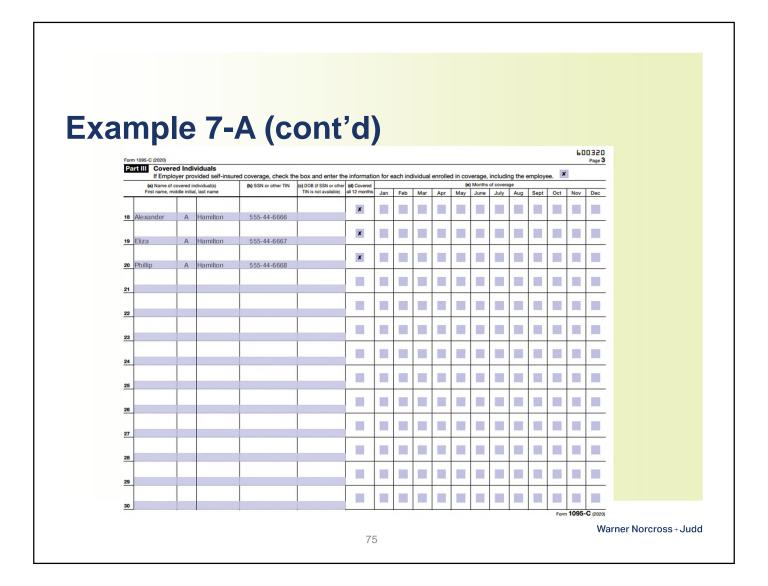


#### **Example 7-A**

Full-time employee is furloughed, and benefits continue

- Employer uses look-back measurement method to determine full-time status
- Date of furlough: 4/30/20
- Return to work date: 9/1/20
- Monthly cost of coverage: \$100
- Eligible for minimum value coverage for employee, spouse and dependents
- Employee had enrolled self, spouse and child in coverage

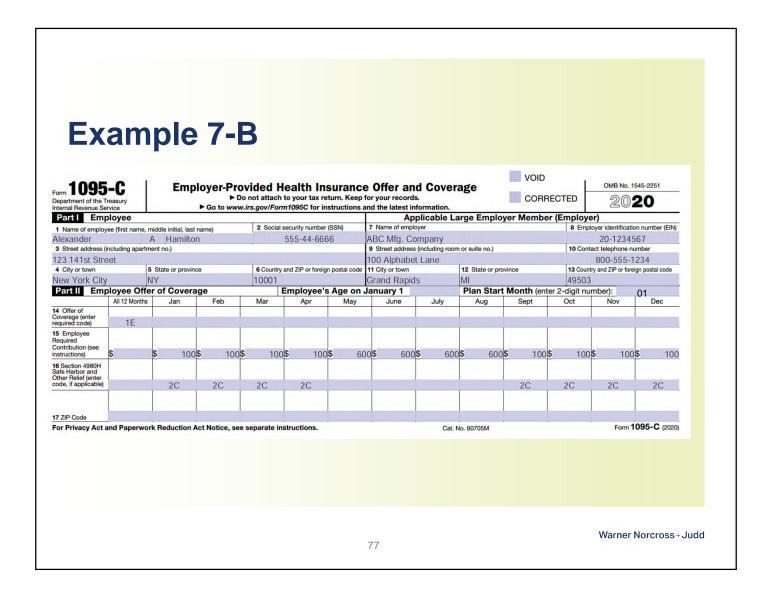


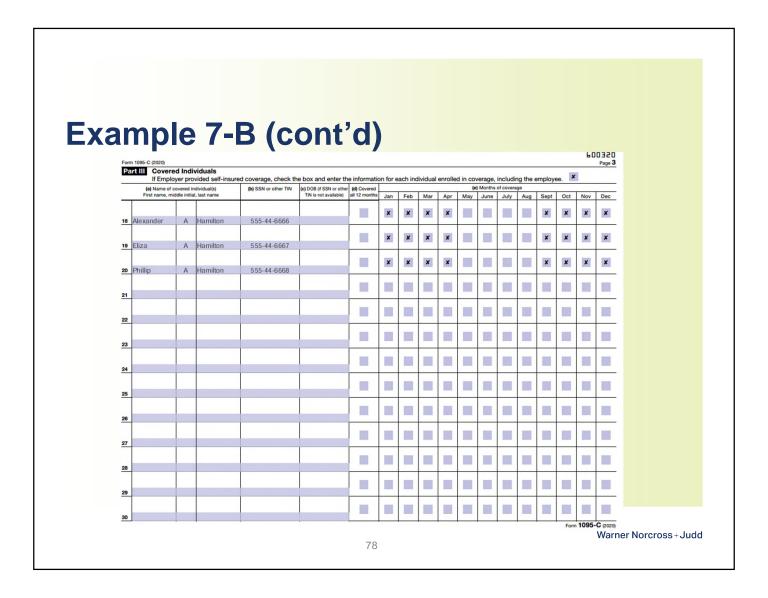


### **Example 7-B**

#### Full-time employee is furloughed, and benefits end

- Employer uses look-back measurement method to determine full-time status
- Date of furlough: 4/30/20
- Return to work date: 9/1/20
- Monthly cost of coverage: \$100
  - Monthly COBRA premium for single coverage: \$600
- Eligible for minimum value coverage for employee, spouse and dependents
- Employee enrolls self, spouse and child in coverage when an active employee
- Employee does not take COBRA while on furlough

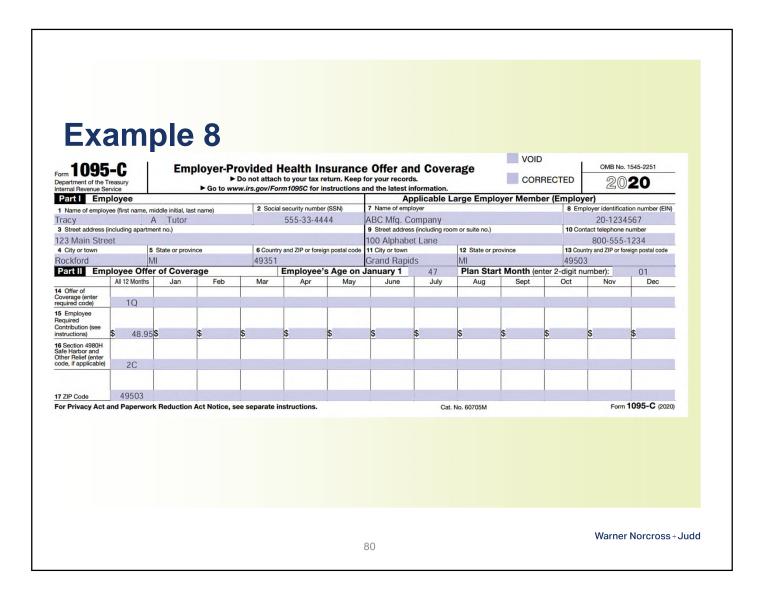


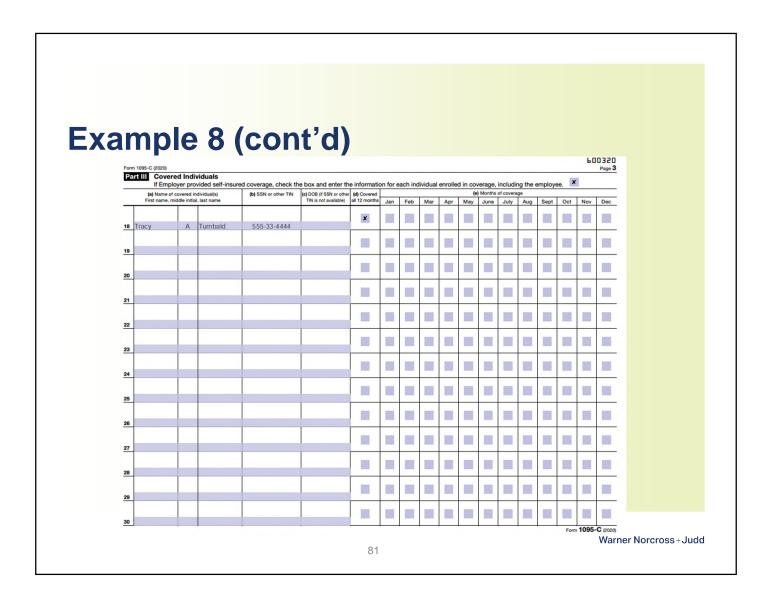


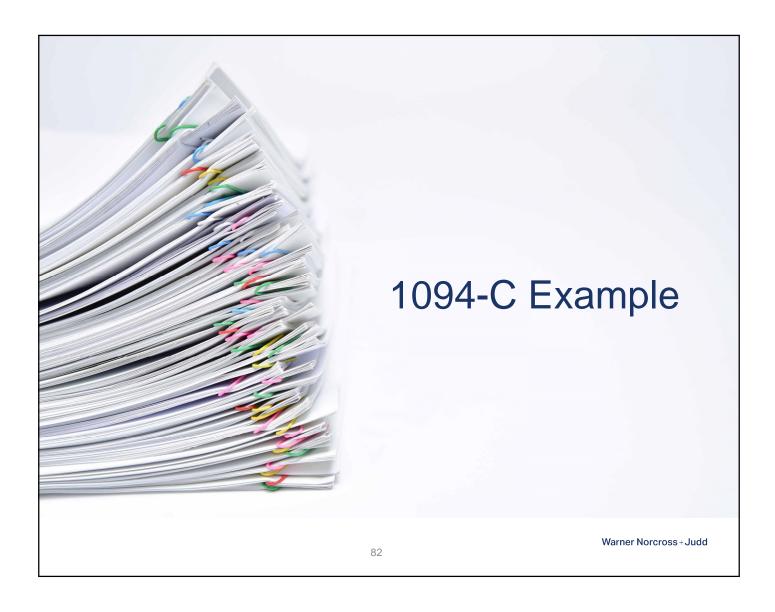
#### **Example 8**

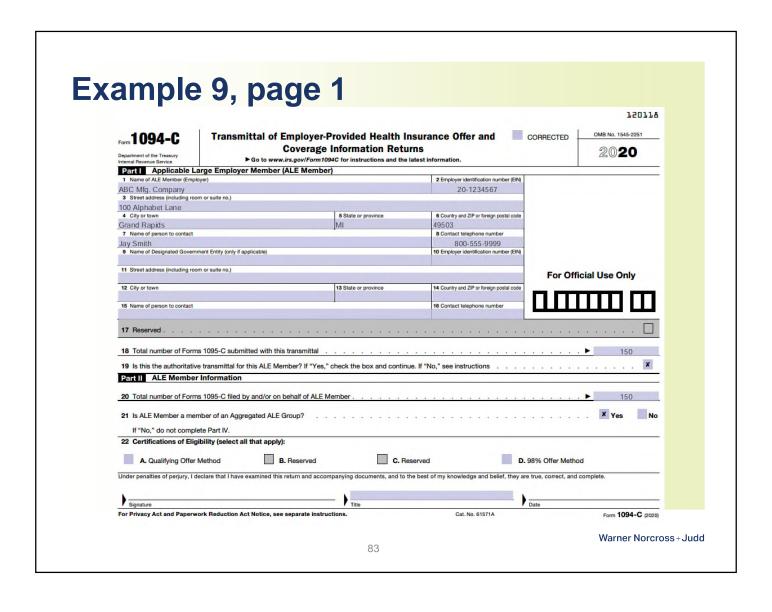
# Employer offers ICHRA to hourly employees, spouses and dependents

- Employee elects to cover herself only
- Employee's age is 47
- Zip code where employee works is 49503
- Employer contribution is \$350/month
- Coverage began January 1, 2020
- Lowest cost silver ACA individual plan for 47 year old female in zip code 49503 is \$398.95









## Example 9, page 2

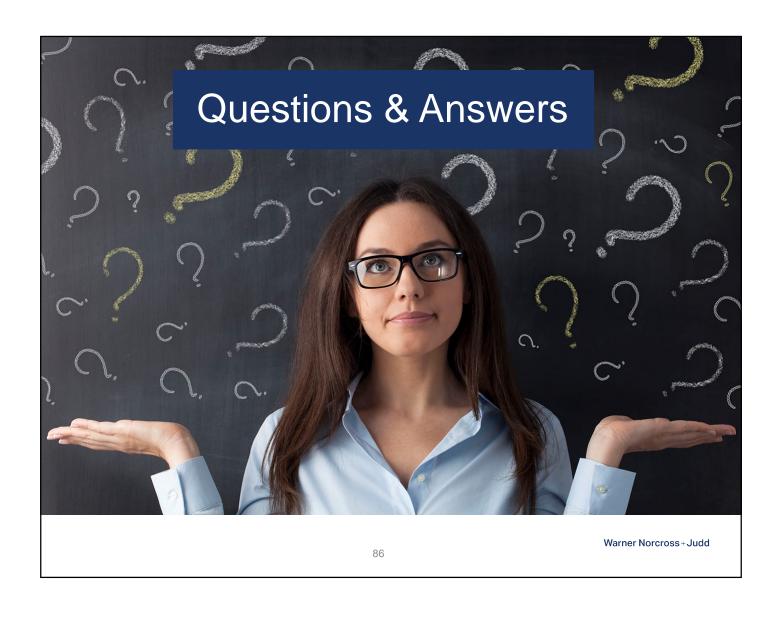
150519

		(a) Minimum Es	sential Coverage			44.400.000.00	
		Offer Indicator		(b) Section 4980H Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Reserved
		Yes	No	Employee Count for ALE Member	IOI ALL Melliper	Group indicator	
	All 12 Months	×				×	
23				148	156	•	
				1.10	100		
24	Jan						
				148	156		
	Feb						
25				145	152		
26	Mar			144	154		
		-	-	144	154		
	Apr						
27				149	155		
	May						
28				150	153		
	June	-		100	100		
29							
				151	153		
	July						
30				151	151		
31	Aug			150	153		
			-	150	133	-	
32	Sept		, I				
,2				153	155		
	Oct						
33				152	156		
	Nov						
34							
				153	156		
_	Dec						
35				157	160		

Form 1094-C (2020)

### Example 9, page 3

Part IV Other ALE Members of Aggregated ALE Group Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year). Name 36 XYZ Corporation 11-1111111 37 L&M Company 11-1111112 Form 1094-C (2020)





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