One of the areas in the employee benefits world where agency guidance has been sorely needed is the application of federal tax and ERISA rules, particularly rules added by the Affordable Care Act (ACA), to health insurance plans that cover foreign-bound US employees (expatriates). The good news is that the agencies responsible for enforcing the ACA (namely Health and Human Services, the IRS and the Department of Labor) have issued transition relief from many of the ACA requirements. The even better news is that Congress enacted a law to help clarify these issues. The bad news is there are many unresolved, arcane issues that preceded the new law. For now, the agencies have indicated that reasonable good faith reliance applies for compliance purposes with the new law.

We'll try to explain how the decades-old ERISA rules can apply to expatriate programs, the problems created by the passage of the ACA and how the new law will apply going forward. As we see it, four issues are relevant to US expatriate programs:

- Does the coverage need to comply with ERISA, including the ACA’s insurance mandates?
- Is the individual required to comply with the ACA’s individual mandate?
- Is the individual’s employer required to comply with the ACA’s employer mandate?
- Does ACA tax reporting apply to the individual?
Pre-ACA: How Can ERISA Apply to Expat Programs?

An important exception from coverage under ERISA applies to plans established and maintained outside the United States primarily for the benefit of people, substantially all of whom are nonresident aliens. If a program does not qualify for the exemption and is subject to ERISA, the plan sponsor must satisfy a number of requirements:

- Insurance mandates, including mental health/substance abuse parity, minimum hospital stays for mothers and newborns and breast reconstruction following a mastectomy.
- Offering enrollment to employees and family members due to a HIPAA special enrollment event.
- Maintaining the plan under the ERISA-compliant written plan document.
- Distributing a summary plan description, as well as a summary of material modifications when the plan is amended.
- Following ERISA guidelines for claims submission and appeals, as applicable.
- Filing a Form 5500, unless an exception applies.
- Furnishing copies of plan documents to participants when requested.
- Procuring a fidelity bond for people who handle plan funds, if any.
- Offering employees (and dependents, if applicable) the opportunity to extend coverage under COBRA.

Because of these and other requirements, plan sponsors might prefer their expat coverage not be subject to ERISA. It’s possible that ERISA won’t apply, but to dodge the ERISA bullet, an expat plan must meet several requirements.

Some **Common Terminology**

**Expatriate (or “expat”):** A citizen of one country who is temporarily or permanently residing in another country. For example, a US citizen who works in China is an expat.

**Inpatriate (or “inpat”):** From a US perspective, a citizen of a foreign country (i.e., an alien) who is transferred to the US to work on a temporary or permanent basis. For example, a Chinese citizen temporarily working in the US is an inpat.

**Foreign national:** From a US perspective, an individual who is a citizen of any country other than the United States.

**Nonresident alien:** Generally, a citizen of a foreign country who does not reside in the US for more than a brief period (e.g., no more than 30 days during the calendar year and fewer than 183 days during the three-year period that includes the current year and the two years immediately before).

**Resident alien:** A citizen of a foreign country who has a US Immigration green card or who has a substantial presence in the US (generally, physically present in the United States on at least 31 days during the current year and 183 days during the three-year period that includes the current year and the two years immediately before).
ERISA Exception Prong #1: Plan Must Be Established and Maintained Outside the United States.

In order to be exempt from ERISA, the plan must be both established and maintained outside the US. The Department of Labor (DOL) has not precisely defined how it interprets “established and maintained,” but the following factors are considered:

- The employer/plan sponsor must be located outside the US.
- Any plan assets must be maintained outside the US. (This is rarely an issue for welfare plans because most do not hold assets in trust.)
- For insured plans, the insurance contract should be issued by an insurer domiciled outside the US. An insurer domiciled outside the US may include a foreign subsidiary of a US-based insurance company, such as a Bermuda subsidiary of a US insurer.

A plan is subject to ERISA even if it covers only foreign nationals but is established and maintained in the US. For example, a welfare plan maintained in the US by a Taiwanese government entity for its employees in the US is covered by ERISA.

Keep in mind that employer plans maintained in US territories are deemed to be maintained in the US and, therefore, are subject to ERISA.

Insurers in US Territories Exempted From Some ACA Insurance Reforms

The US Department of Health and Human Services (HHS) has indicated it will not require insurers in the US territories to comply with some of the ACA’s insurance market reforms. The US territories include Puerto Rico, the US Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

In a letter to the Commissioner of Insurance of Puerto Rico, HHS indicated it won’t enforce against insurers a number of ACA provisions that would otherwise apply to health insurance issued in the US territories due to concerns about “undermining the stability of the territories’ health insurance markets.” The market reforms that won’t apply include medical loss ratio (MLR) rebates, guaranteed issue and other rating requirements that apply to individual and small group coverage. Other ACA-imposed insurance mandates will continue to apply in the US territories, however, including coverage of adult children to age 26, a ban on preexisting condition exclusions and a maximum 90-day waiting period.

What does this mean for employers in the US territories? Not much, as the HHS exemption only applies to health insurance coverage issued in the US territories. Because the ERISA law applies in the US territories, employers that are subject to ERISA and offer coverage there must continue to comply with the ACA mandates that are included in ERISA (e.g., the ban on preexisting condition exclusions, prohibitions on annual or lifetime dollar limits on essential health benefits, etc.).

However, the employer and individual mandates are moot in the major US territories because US tax law does not apply (Puerto Rico, US Virgin Islands, Guam, American Samoa and The Commonwealth of the Northern Mariana Islands). For example, Puerto Rico operates under its own tax law that does not currently include the employer or individual mandate. For the territories that are subject to US tax law, those residents are deemed to satisfy the individual mandate, even if they do not have health insurance coverage. Territories subject to the US tax law include Midway Island, Wake Island, Palmyra Island, Howland Island, Johnston Island, Baker Island, Kingman Reef, Jarvis Island and other US islands, cays, and reefs that are not part of any of the 50 states.
ERISA Exception Prong #2: Plan Must Be Primarily for the Benefit of People, Substantially All of Whom Are Nonresident Aliens.

The DOL has issued a handful of rulings that address what is considered “primarily for the benefit of persons, substantially all of whom are nonresident aliens.” Many of the rulings are from the 1980s or earlier, and they are inconsistent.

Sometimes the result is obvious. For example, a plan that is maintained in France and covers only French citizens is not subject to ERISA. The analysis is more complicated in other instances, such as where plans maintained overseas cover a mix of aliens and US citizens.

What does all this mean? ERISA will apply if the coverage is issued by a US insurer or if the plan sponsor is located in the US. The harder issue is when a non-US insurer covers US expats, as the insurer will rarely be willing to accept the mandates that are included in ERISA. As we’ll see, the new law adds some teeth to this by requiring foreign insurers to comply with ACA tax-reporting requirements.

ACA Muddies the Water

The ACA amended ERISA, the Internal Revenue Code and the Public Health Services Act (the last being the federal law that applies to insurers) to add new requirements, including the following:

- The employer mandate requires most employers to offer reasonably robust and affordable coverage to their full-time employees beginning in 2015.
- The individual mandate requires that most citizens have health insurance coverage or face penalties when they file their federal income tax returns. As we’ll see, compliance with the individual mandate will be crucial for US expats who file US tax returns.
- Insurance reforms mandated some changes to health insurance coverage and subjected health insurers and self-funded employers to new taxes and fees.
- ACA tax reporting is required by employers who are subject to the employer mandate, as well as US and foreign insurers.

After the passage of the ACA, the federal agencies realized these complexities and issued FAQ guidance that exempted insured expatriate programs from some of the ACA requirements through 2015. Subsequent guidance pushed the compliance date for plan years ending through December 31, 2016.
Even with the regulatory leeway, US health insurers argued the complexity and associated costs of the ACA rules created a competitive disadvantage, with non-US insurers writing expatriate coverage that did not comply with all of the ACA-related mandates. These concerns are largely addressed in the new law discussed below.

**Enter EHCCA**

Included in a budget bill signed by the President last December was the Expatriate Health Coverage Clarification Act of 2014 (EHCCA) that exempts some expat coverage from several thorny ACA-related requirements. It also treats the coverage as adequate for both the individual and employer mandates . . . but only if the coverage meets several specific and potentially difficult requirements.

The rules and their potential accommodations apply to insurance contracts issued or renewed on or after July 1, 2015. However, the IRS issued a notice indicating insurers and employers will be given more time to bring their expat plans into compliance with the new law. Until the regulatory agencies (the IRS, DOL and HHS) issue proposed regulations, the agencies will allow insurers and employers to use a reasonable good faith interpretation of the law.

**When the Reasonable Good Faith Standard Does Not Apply**

**ACA Tax Reporting Requirements**

These apply to expat coverage beginning in calendar year 2015. The ACA requires insurers and self-funded plan sponsors to report the insurance they supplied to covered individuals during the prior year, and expat plan insurers (and self-funded expat plan sponsors) must honor this reporting. The law allows the IRS tax forms to be supplied electronically to the enrollee (expat) without consent, unless the enrollee explicitly refuses electronic delivery. In contrast the standard ACA reporting rules only allow for electronic delivery to the employee if the recipient affirmatively consents.

**PCORI Fee Payment**

Until further notice, the IRS has indicated that the PCORI fee won’t apply if the plan or policy is designed and issued specifically to cover primarily employees who are (a) working and residing outside the US, or (b) not citizens or residents of the US but assigned to work in the US for a specific and temporary purpose or who work in the US for no more than six months of the policy year or plan year.
Nevertheless, the EHCCA does hold some advantages for expat coverage that can clear three hurdles:

**Hurdle #1—Expatriate Health Plan’s Enrollees Must Be Substantially All “Qualified Expats”**

To qualify for the relief, the expatriate health plan must be a group health plan (including a self-funded plan) or insured program where substantially all primary enrollees meet one of the three criteria below. The law refers to these as “qualified expatriates,” which, as noted below, can include a US-bound inpatriate. An expatriate health plan may include coverage for the individual’s spouse and dependents as well as “other individuals enrolled in the plan,” such as domestic partners.

The three types of qualified expatriates are:

1. **Expatriates outside the US**—People who work outside the US for a period of at least 180 days in a consecutive 12-month period that overlaps the plan year.

2. **US-bound inpatriates**—Foreign workers transferred or assigned to the US on temporary assignment who need access to health insurance in multiple countries, and their employer offers them multinational benefits, such as tax equalization, cross-border moving expenses, etc. People who are not US nationals and who reside in their country of citizenship do not qualify.

3. **Students/missionaries/charity workers**—These individuals also meet the definition of qualified expatriate, subject to future criteria to be determined by the federal agencies.

**Hurdle #2—Expatriate Health Plan’s Coverage Must Meet Specific Criteria**

Assuming the plan clears the first hurdle, the coverage must then meet specific criteria to qualify for the partial exemption from the ACA discussed below. These conditions include:

- Insurance coverage for inpatient hospital services, outpatient facility and physician services and emergency care. For US-bound inpat, the coverage must be available in the US and the country from which the person was assigned. For other groups of expats, the coverage must be available in the country where the person is present.
The plan has an actuarial value of at least 60 percent and substantially all of the plan’s benefits cannot be ACA-excepted benefits (dental, vision, etc.).

If the plan provides for coverage of children, that coverage extends through age 26.

The insurer, or third-party administrator if self-funded:

- Is licensed to sell insurance in more than two countries and processes at least $1 million in claims in foreign currency equivalents annually.
- Offers reimbursement in local currency for eight or more countries.
- Meets network adequacy and other standards in eight or more countries.
- Maintains call centers in three or more countries and accepts calls in eight or more languages.
- Provides global evacuation and repatriation coverage.
- Maintains legal and compliance resources in three or more countries.

The coverage satisfies the applicable pre-ACA ERISA standards for health insurance, including mental health/substance abuse parity, 48 hours of maternity care, COBRA, claims appeal requirements, distribution of summary plan descriptions, and filing of Form 5500 (as applicable). Expat coverage issued by a US carrier typically meets these requirements, but often coverage issued by a foreign carrier does not.

Keep in mind that ERISA will apply to expat coverage except if the plan is established and maintained outside the US primarily for the benefit of people, substantially all of whom are nonresident aliens.

Hurdle #3—Insurer Agrees to Handle ACA Tax Reporting

ACA tax reporting still applies to the expat coverage, but the IRS forms can be supplied electronically to the enrollee without consent unless the enrollee explicitly refuses electronic delivery. If the coverage is issued by a foreign insurer, the employer most also provide a notice to enrollees that the coverage qualifies as minimum essential coverage (MEC), which satisfies the individual mandate.

Significantly, if the insurance carrier does not agree to facilitate the tax reporting, then the expat coverage falls outside the scope of the new law and becomes subject to the full array of ACA mandates. It remains to be seen whether the federal agencies would assess penalties on the insurer—which may be outside the agencies’ jurisdiction if the carrier is not licensed in the US—or whether penalties could accrue to a US-based employer/plan sponsor.
If My Expat Plan Clears All the Hurdles, What Relief Applies?

First, the good news: Expat plans that meet the criteria above do not have to comply with the following ACA mandates:

- Dollar limits on essential health benefits
- Waiting period limits of 90 days
- Out-of-pocket maximums for in-network care
- Cost sharing on in-network preventive care
- Rigorous claims appeal procedures
- Preexisting condition exclusions
- Retroactive coverage terminations (except fraud)
- Distribution of summaries of benefits and coverage (SBCs)

Coverage under the expat plan is also deemed to satisfy the individual and employer mandates, and it is exempt from the ACA’s taxes and fees, including the transitional reinsurance fee, PCORI fee and the insurance company excise tax (after 2015, subject to transition rules). The new law contains an exemption for some expat coverage with respect to the excise tax (also known as the Cadillac tax) on high-value health plans that will apply in 2020 (see discussion below).

Now, the not-so-good news: The exemption from the Cadillac tax does not apply with respect to a US-bound inpat (see the second bullet under Hurdle #1 on page 6) if the person is assigned, rather than transferred, to the US. Regulators will need to clarify the terms “assigned” and “transferred.”

Transfer or Assignment?
A transfer usually refers to a permanent concept, while an assignment is temporary, even if it is long term. Typically this issue would be addressed in the agreement between the inpat and his or her employer.
# Comparison of Transition Relief and EHCCA

<table>
<thead>
<tr>
<th>Rule</th>
<th>Transition Relief</th>
<th>EHCCA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective date*</td>
<td>For plan years ending through 12/31/16</td>
<td>Contracts issued or renewed on or after July 1, 2015</td>
</tr>
<tr>
<td>Relief from pre-ACA coverage mandates?</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>(MH/SA parity, COBRA, HIPAA, etc.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Relief from ACA coverage mandates?</td>
<td>Yes</td>
<td>Yes: dollar limits on essential health benefits, waiting period limits of 90 days, out-of-pocket maximums for in-network care, cost-sharing on in-network preventive care, rigorous claims appeal procedures, preexisting condition exclusions, retroactive coverage terminations (except fraud), distribution of summaries of benefits and coverage (SBCs)</td>
</tr>
<tr>
<td>Relief apply to self-funded plans?</td>
<td>No</td>
<td>Yes, if &quot;substantially all&quot; who are covered are qualified expats</td>
</tr>
<tr>
<td>Definition of qualifying expat (Relief also applies to trailing dependents)</td>
<td>Good faith expectation that person will reside outside of home country or US for at least 6 months of a 12-month period (may cross parts of two consecutive plan years)</td>
<td>People who work outside the US for a period of at least 180 days in a consecutive 12-month period that overlaps the plan year Also, US-bound inpatriates, temporarily assigned for job-related reasons, who receive other multinational benefits</td>
</tr>
<tr>
<td>Specific insurance coverage criteria for expat coverage?</td>
<td>No</td>
<td>Must cover inpatient hospital services, outpatient facility and physician services and emergency care Must have at least 60% actuarial value and substantially all benefits are not ACA excepted benefits (dental, vision, etc.) The insurer (or TPA) is licensed in more than two countries and meets network adequacy and other standards, including: ❖ Maintaining call centers in three countries and in at least eight languages ❖ Providing global evacuation and repatriation coverage ❖ Maintaining legal/compliance resources in at least three countries</td>
</tr>
<tr>
<td>6055/6056 reporting required?</td>
<td>Yes</td>
<td>Yes, but can deliver employees’ copies of tax forms electronically without consent (Note: EHCCA relief is conditional on carrier agreeing to facilitate tax reporting)</td>
</tr>
<tr>
<td>Coverage satisfies employer mandate?</td>
<td>Yes, as a practical matter</td>
<td>Yes*</td>
</tr>
<tr>
<td>Coverage satisfies individual mandate?</td>
<td>Yes, only if 6055/56 reporting satisfied; concern for non-US carrier</td>
<td>Yes*</td>
</tr>
<tr>
<td>PCORI ($2.17 per enrollee for 2016)</td>
<td>Yes, for plans (whether insured or self-funded) designed to primarily cover employees residing and working outside the US Plans covering inpatriate groups are not exempt</td>
<td>Yes, for plans (whether insured or self-funded) if &quot;substantially all&quot; who are covered are qualified expats Plans covering inpatriate groups can qualify for exemption</td>
</tr>
<tr>
<td>Transitional reinsurance ($27 per enrollee for 2016)</td>
<td>Yes, for fully insured expatriate plans that qualify for the transition relief</td>
<td>Yes, for plans (whether insured or self-funded) that cover &quot;substantially all&quot; qualified expats</td>
</tr>
<tr>
<td>Cadillac tax (2020)</td>
<td>Applies both to fully insured and self-funded expatriate plans ($10,200 single/$27,500 family)</td>
<td>Exemption applies, but not for US-bound inpat if person is assigned but not transferred to the US</td>
</tr>
</tbody>
</table>

*Regulators will need to address overlapping compliance for 2015/2016.
A Closer Look at the Individual Mandate

The ACA includes an individual mandate that requires US taxpayers to have health insurance that qualifies as minimum essential coverage, or MEC. US taxpayers who do not maintain health insurance coverage that qualifies as MEC under the law will be subject to a shared responsibility payment when they file their taxes. The payment will be either:

- A percentage of the household income that is over the tax-filing threshold (the percentage is 2 percent for 2015 and 2.5 percent thereafter).
- If larger, a flat dollar amount assessed on each taxpayer and any dependents. The annual flat dollar amount per uninsured person is $325 for 2015 and $695 for 2016 and beyond, subject to the family cap at 300 percent of the annual flat dollar amount.

The law designates the categories of health coverage that constitute MEC and will satisfy the individual mandate as the following:

- US government-sponsored programs (for example, Medicare, Medicaid, CHIP or TRICARE).
- Coverage under a US employer-sponsored plan (including a self-funded plan or any insured plan offered in the small- or large-group market within a US state).
  - Coverage under a US employer health plan, other than excepted benefits (dental, vision, etc.).
  - Coverage under expatriate health plan (see discussion above).
- Coverage under an individual health insurance policy purchased within a US state.

The individual mandate applies to US citizens and legal US residents (including resident aliens), but not people who are unlawfully present in the US (for example, an alien who does not have a required visa) or nonresident aliens. Some exceptions apply to the individual mandate:

- Residents of US territories for at least 183 days during the calendar year (Puerto Rico, US Virgin Islands, American Samoa, Guam and the Northern Mariana Islands).
- US citizens who qualify for the foreign earned income tax exclusion (individuals who live abroad for the entire calendar year or at least 330 days within a 12-month period).
- US citizens who are bona fide residents of a foreign country (or countries) for an entire taxable year.
- Gap in coverage of less than three consecutive months.

Does Coverage From a Foreign Insurance Company = MEC?

Coverage under a US-based expatriate health plan would meet the individual mandate for a US citizen who lives abroad. The question is, will health coverage provided by a non-US insurer also qualify? Health insurance issued by a non-US carrier is considered MEC for a month if the covered person is physically absent from the US for at least one day of the month. This coverage also qualifies as MEC for an individual who is physically present in the US for an entire month, if the coverage provides health benefits within the US while the individual is on expatriate status (e.g., furlough or home leave). The insurer or plan sponsor must notify citizens and nationals covered under the program that it qualifies as MEC, as well as complies with US tax-reporting obligations that will apply in 2016 with respect to calendar year 2015.

HHS can choose to recognize “other coverage,” including health coverage provided by a foreign government, as MEC. The final regulations outline the procedural requirements that apply for HHS to make the determination as to whether coverage qualifies as MEC.
US-bound inpatriates may also have to satisfy the individual mandate if they are in the US long enough to qualify as a resident alien for tax purposes, and could do so in the same manner as an expat (coverage under an employer plan, coverage under a health policy purchased with a state or qualifying for an exception, such as a three-month or shorter gap in coverage of less than three months).

A Closer Look at the Employer Mandate

Most employers must offer their full-time employees qualifying and affordable coverage or risk penalties if these individuals obtain a tax credit for purchasing coverage through a public insurance exchange, or marketplace. For a thorough discussion of the employer mandate, see Lockton’s Spring 2014 Compliance News.

The employer mandate will only be an issue if the employer is subject to US tax laws, and then only if 1) the employer’s controlled group has at least 50 full-time/full-time equivalent employees, and 2) the employer has full-time employees (those who work 30+ hours per week).

In determining whether an employee is full time and works the requisite 30 hours per week, hours worked outside the US are ignored if they are attributable to compensation for services provided outside the US, regardless of the residency or citizenship of the employee. Likewise, when determining whether the employer’s controlled group has at least 50 full-time/full-time equivalent employees, we also exclude these same hours of service.

This means the employee working overseas for an entire month will never qualify as a full-time employee for purposes of the employer mandate. In addition, coverage under an expatriate health plan (US-based or foreign) would disqualify the individual from purchasing coverage through a public insurance exchange (thus, rendering moot the employer mandate penalty).
For US inpatriates, in order to purchase coverage through a public insurance exchange and potentially receive a tax credit, a person must meet all three of these criteria:

- Be a US citizen, US national, or noncitizen lawfully present in the US.
- Be reasonably expected to remain in the US for the entire period for which enrollment is sought (presumably this means the remainder of the calendar year).
- Not be covered by employer-sponsored MEC.

The combination of these criteria will make it difficult for foreign nationals in the US to qualify for tax credits for any coverage purchased through a public exchange. Consequently, it is unlikely their employer would be penalized for failing to offer inpatriates qualifying and affordable coverage. That employer penalty only applies to the extent that a full-time employee receives a tax credit through a public insurance exchange.

**ACA Tax Reporting**

Tax reporting applies to employers subject to the employer mandate as well as health insurers who provide employment-based coverage. The employer is obligated to complete a Form 1095-C for each employee who qualifies as being full-time for at least one month during the calendar year. The Form 1095-C is transmitted to the IRS with Form 1094-C.

The Form 1095-C contains three parts:

I. Employee and employer information (name, address, and Social Security number (SSN) or taxpayer ID)

II. Employer offer and coverage information, shown monthly

III. Name and SSN of covered individuals

For full-time employees, if the coverage is self-funded, the employer must complete parts I, II and III. If the coverage is fully insured, the employer completes parts I and II and the insurer issues a Form 1095-B that shows the covered individuals with their SSNs.

For part-time employees, there is no obligation for an employer to issue a Form 1095-C. However, an exception applies if a part-time employee is covered under a self-funded plan. The employer would complete Parts I, II and III for the part-timer.
For the most part, coverage provided to a US expat will be insured. This means the insurer must issue a Form 1095-B. This will rarely be a concern for a US-based insurer, but may be an issue with a foreign insurer that does not want to build the ACA tax-reporting capability. Recall that if the carrier does not satisfy its ACA tax-reporting obligations, the coverage will fail to satisfy the employer mandate and the individual mandate, and it may be subject to excise taxes under the US Tax Code to the extent it does not comply with ACA insurance mandates.

For an insured program, the employer will be responsible for completing parts I and II of the Form 1095-C, but only to the extent the individual qualifies as a full-time employee under the ACA for a month. Of course, an employee transferring overseas during the calendar year will likely be considered full time prior to the date of transfer. However, once the US expat is working overseas and has no US-source income, employer reporting on the 1095-C would be a moot point because hours worked outside the US are ignored for determining full-time status.

When the US expat completes his or her foreign assignment and returns to the US, the ACA rules allow the individual to be treated as a new hire if he or she has worked overseas for at least 13 weeks. As a new hire, the coverage offer (if he or she is working full-time hours) would have to come by the first day of the fourth full calendar month after return. This waiting period would be considered a “limited nonassessment period” and would be shown as Code 2D on line 16 of Part II of the 1095-C (meaning the employer would not be vulnerable to an employer mandate penalty if the individual purchased exchange coverage).

What about a resident alien who works in the US? Typically, a resident alien who works in the US will be considered a full-time employee because hours worked in the US are used to determine full-time status. The employer will need to issue a Form 1095-C if the individual is a full-time employee for any month. No reporting exception applies if the person is not a US citizen.

**Form 1095-C Reporting**

Employers need to be aware of their reporting obligations with respect to the ACA. But on whom must an employer report when it comes to expatriate benefits programs? Assuming an employer is subject to the employer mandate and the employees in question are not variable hour, the table below shows the impact of Form 1095-C reporting.

<table>
<thead>
<tr>
<th>Who</th>
<th>Reporting Implication</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>US expat working overseas</strong></td>
<td>No. Hours worked outside US ignored, so employee won’t meet 30-hour threshold.</td>
</tr>
<tr>
<td><strong>Inbound US expat</strong></td>
<td>OK to treat as new hire if worked outside US for 13+ weeks. Reporting applies to any month worked 30+ hours in US; can apply waiting period.</td>
</tr>
<tr>
<td><strong>Resident alien</strong></td>
<td>Reporting applies to any month worked 30+ hours in US.</td>
</tr>
</tbody>
</table>
Our Mission

To be the worldwide value and service leader in insurance brokerage risk management, employee benefits, and retirement services

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To be the best place to do business and to work