

# The ICHRA Advantage:

## Ensuring ACA Compliance for Large Employers



# About SureCo

**Amplifying Group Benefits.  
Delivering Results.**

**SureCo**

## **Mission Driven**

Improving the health and well-being of working Americans.

## **Built for Large Group (250+ EEs)**

Our benefit administration and enrollment platform is tailor-made for the priorities of large and distributed teams.

## **60+ Years**

60+ years of combined healthcare compliance and ICHRA experience.

## **Lobbying Efforts**

Instrumental in the lobbying efforts that led to the passing of ICHRA.

# Presenters



**Lindsey  
Unterberger**

Vice President of  
Product Marketing

**SureCo**



**John  
Jenkins**

Head of  
Compliance

**SureCo**



**Nick J.  
Welle**

Partner  
Employee Benefits

**FOLEY**  
FOLEY & LARDNER LLP

# Agenda

## ACA Compliance in 3 Acts

- **ACT I:**  
The ACA Employer Mandate & Consequences of Noncompliance
- **ACT II:**  
The Pitfalls of Compliance & How ICHRA Manages All That Risk
- **ACT III:**  
A Deep Dive Into ERISA, Affordability, Age-Banding, Medicare, COBRA, & More
- **Q & A**

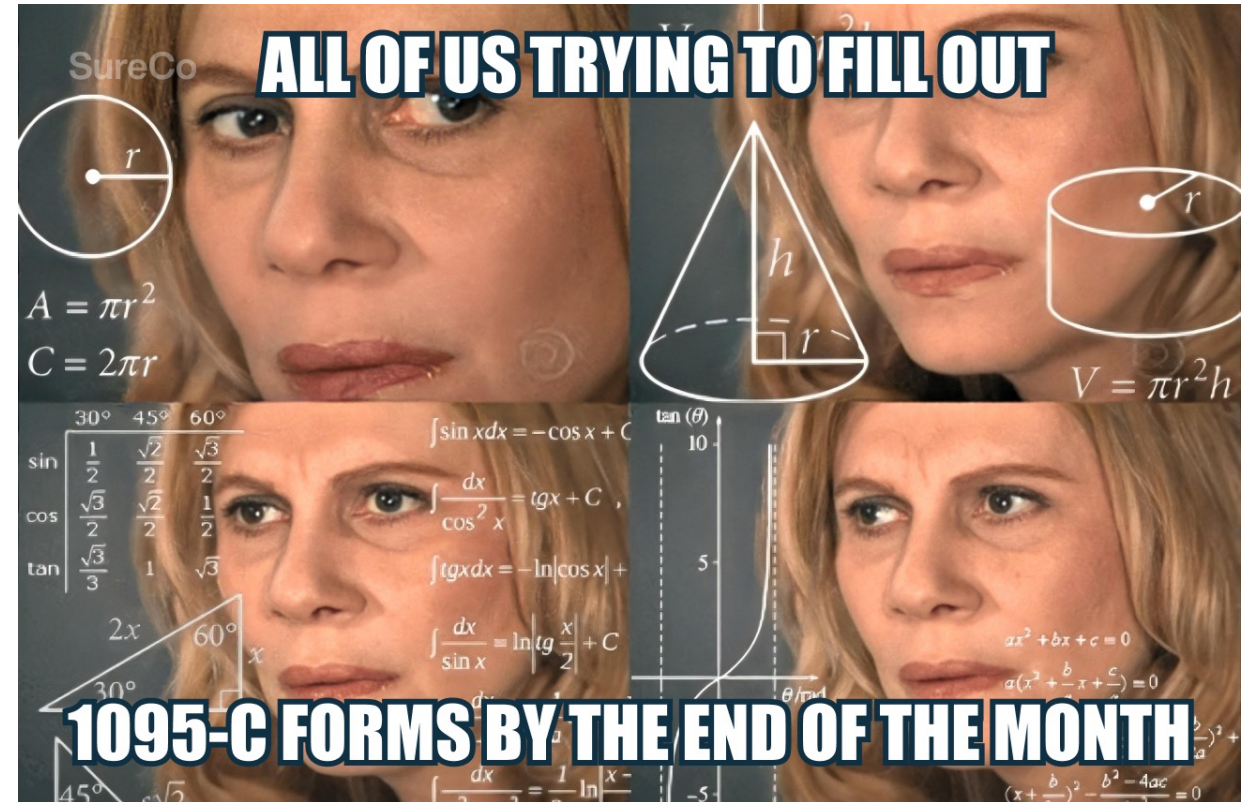
Join us for "Office Hours" on Tuesday, March 19, 2024 at 10AM ET to continue the conversation!

# ACT I

The ACA Employer Mandate & Consequences of Noncompliance



# How's Your ACA Reporting Season Going?



## Sample IRS 226J Penalty Letter



Department of the Treasury  
Internal Revenue Service

Taxpayer Name  
Taxpayer Address  
City, ST Zip code

Date:  
02/13/2018  
Tax year:  
YYYY  
Employer ID number:  
#####  
Person to contact:  
Contact Name  
Employee ID number:  
#####  
Contact telephone number:  
(###) ###-####  
Contact e-fax number:  
(###) ###-####  
Response date:  
03/05/2018

Dear Taxpayer:

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

**Proposed ESRP \$0.00**

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

You generally owe an ESRP for a month if either:

- You did not offer minimum essential coverage (MEC) to at least 100% of your full-time employees (and their dependents) and at least one of your full-time employees was certified as being allowed the PTC; or
- You offered MEC to at least 100% of your full-time employees (and their dependents), but at least one of your full-time employees was certified as being allowed the PTC (because the coverage was unaffordable or did not provide minimum value, or the full-time employee was not offered coverage).

This letter certifies, under Section 1411 of the Affordable Care Act, that for at least one month in the year, one or more of your full-time employees was enrolled in a qualified health plan for which a PTC was allowed. Based on this certification and information contained in our records, we are proposing that you owe an ESRP of \$0.00.

**What you must do**

Review this letter carefully. It explains the proposed ESRP and what you should do if you agree or disagree with this proposal. You must tell us whether you agree or disagree with the proposed ESRP by the Response date on the first page of this letter.

The following items are included:

- An explanation of the employer shared responsibility provisions in Internal Revenue Code (IRC) Section 4980H, which are the basis for the ESRP. See **About the ESRP**;
- An **ESRP Summary Table** itemizing your proposed ESRP by month;
- An **Explanation of the ESRP Summary Table**;

Letter 226-J (Rev. 1-2018)  
Catalog Number 67905G

SureCo

# The Consequences of Noncompliance

» 1 in 4 organizations will be audited for ACA compliance

» ACA Compliance is a "pay-or-play" scenario

» You could receive a 226J letter saying you're liable for an Employer Shared Responsibility Payment \$\$\$\$

The Goal of **Patient Protection and Affordable Care Act (ACA)** is to increase access to affordable health insurance.





# What Is the ACA's Employer Mandate?

**All companies with 50+ full-time employees must provide:**

- » **Minimum essential coverage** (covers emergencies, preventative care, etc)
- » That meets the **minimum value** (i.e., 60% of the total cost of services)
- » And is considered **affordable** (based on an employee's HHI)

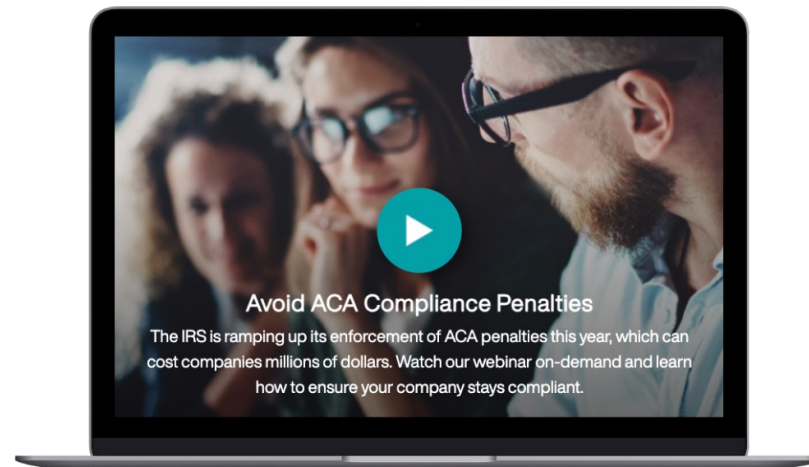
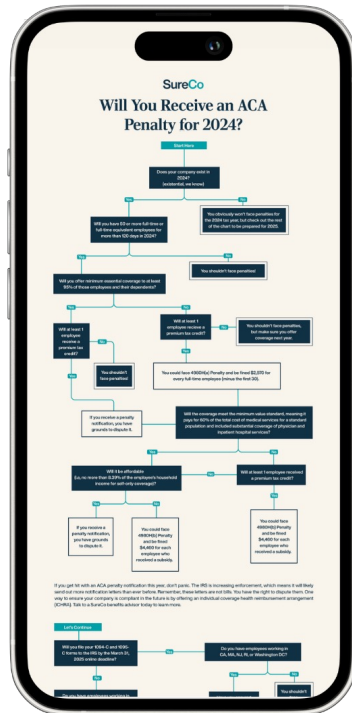
# The **Key** Components of ACA Compliance

- » Knowing how many full-time or full-time-equivalent employees you have
- » Offering affordable, comprehensive health coverage to those employees
- » Documenting offers of health insurance coverage
- » Submitting reporting documentation for the IRS and state-specific regulations

# Where Compliance Goes Awry

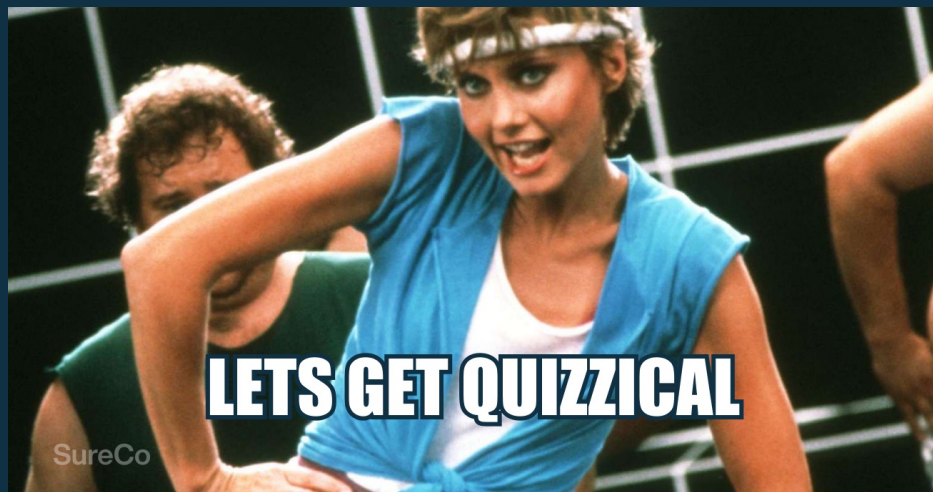
- » Companies with high turnover and/or workers with a high % of variable hours
- » Not providing employee notices around coverage options
- » ACA reporting document errors
- » Distributing/filing reporting forms after the deadline
- » Failing to consider how Medicare, ERISA, and COBRA fit into your benefits strategy

# All Your Compliance Resources



Find these and more on [sureco.com/compliance](https://sureco.com/compliance)

# Poll



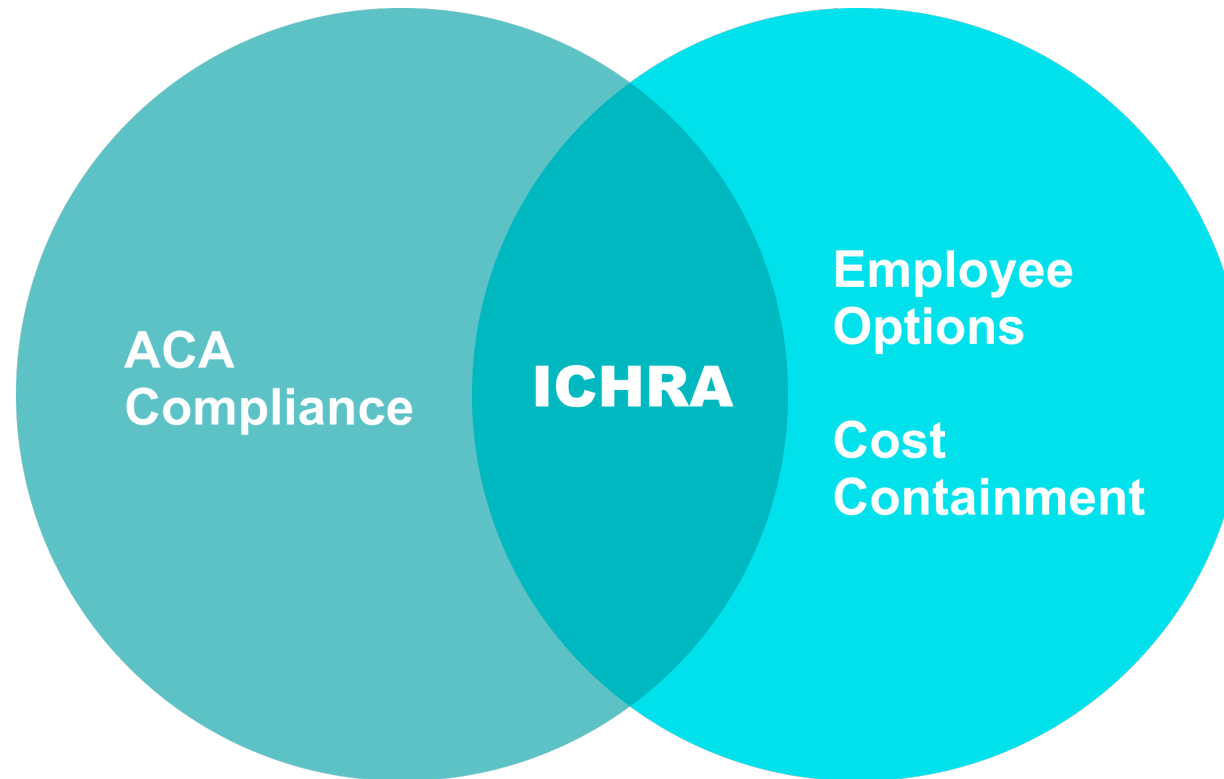
How many of you have  
filed your 1095-Cs?



# ACT II

The Pitfalls of Compliance & How ICHRA Manages All That Risk

# What's ~~Love~~ ICHRA Got to Do With It?



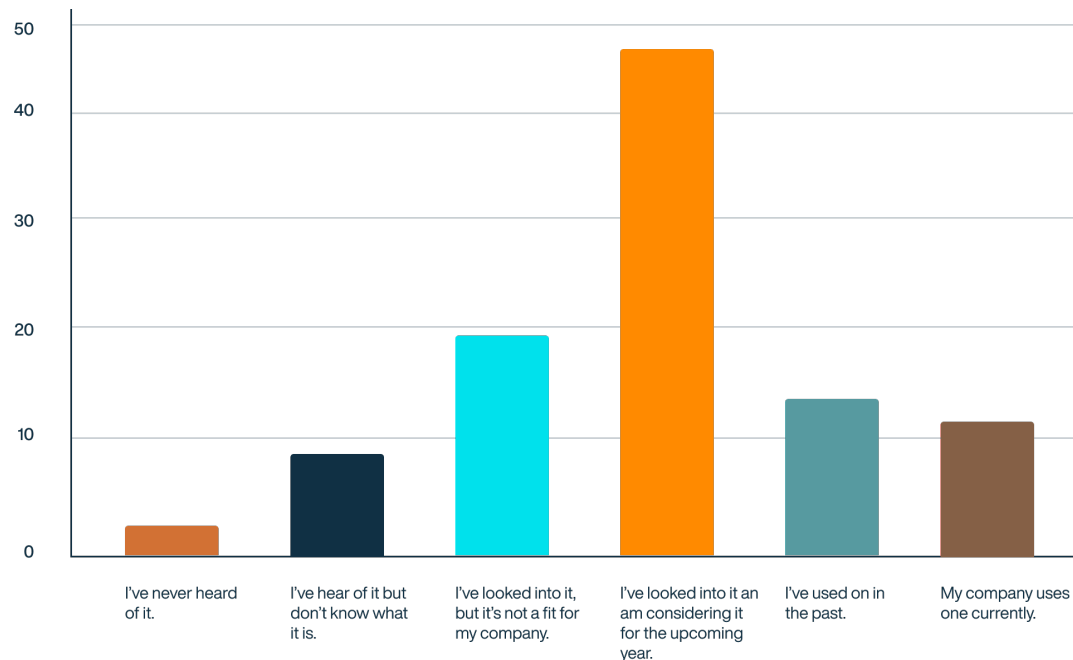
# What Is an ICHRA?

Individual Coverage Health  
Reimbursement Arrangement

**Ich | ra ('ikra) *n.*** [[ ik-ruh]] An alternative to traditional group health insurance that allows employers of any size to use pre-tax dollars to contribute to the premiums of health plans their employees purchase on the individual market

# ICHRAs: A Fully-Compliant Benefits Model on the Rise

How Familiar Are You With ICHRAs?



42%

of employers are considering an ICHRA for the upcoming year

63%

of brokers believe ICHRAs will take over at least 50% of the market in the next decade

78%

of employers said their broker raised an ICHRA to them

# How ICHRA Compliance Differs From Traditional Group Health Plans

- » No claims risk
- » Enhanced flexibility in terms of affordability
- » Reduced COBRA burden
- » Eliminates Section 111 reporting for secondary payers (Medicare)
- » Premium payment substantiation required



# A Closer Look at Premium Substantiation

With Other ICHRA Administrators



With SureCo

## Transaction History

Date ▼	Amount	Status
2024-03-02 06:00 AM	\$2,097.21	Settled
2024-03-02 06:00 AM	\$2,097.21	Settled
2024-03-01 11:29 PM	\$2,097.21	Pending
2024-03-01 11:29 PM	\$2,097.21	Pending
2024-02-02 05:29 AM	\$2,097.21	Settled
2024-02-02 05:29 AM	\$2,097.21	Settled
2024-02-01 08:48 PM	\$2,097.21	Pending
2024-02-01 08:48 PM	\$2,097.21	Pending

Close

# ACT III

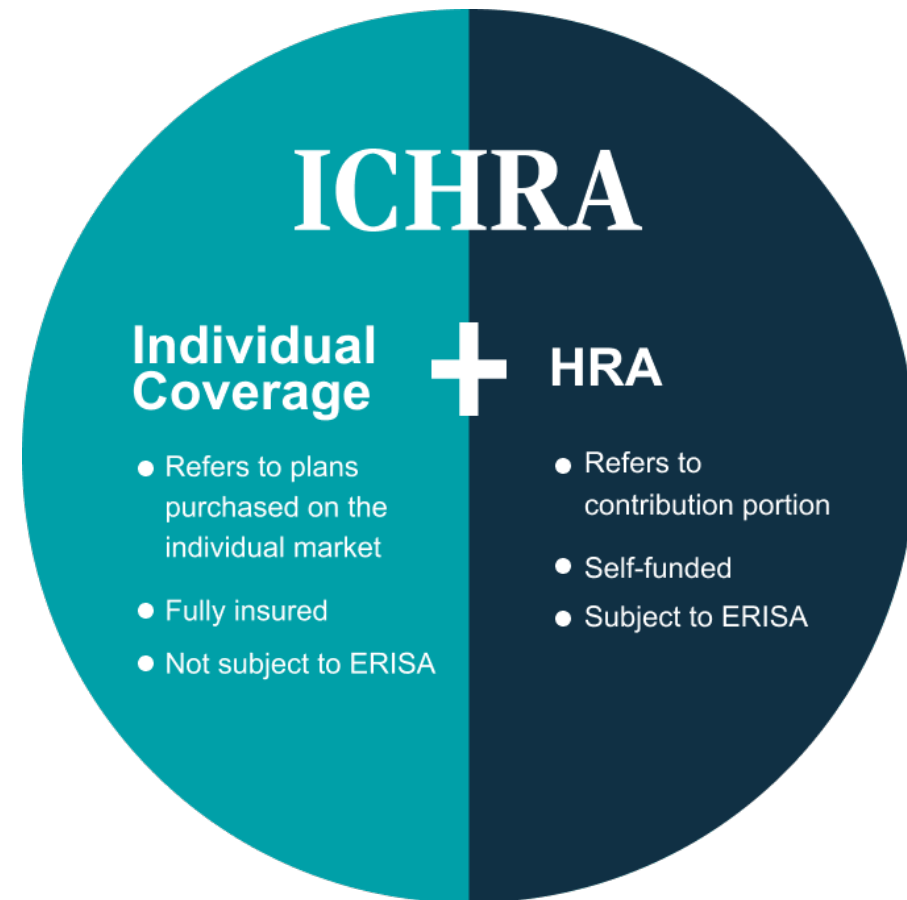
A Deep Dive Into ERISA, Employee Classification,  
Affordability, Age-Banding, Medicare, COBRA, & More

# A Cautionary Tale of Woe ( & Bankruptcy)



## Compliance Issue

ERISA: Are  
ICHRAs  
Considered a  
Group Plan Under  
ERISA?



### Compliance Issue

ERISA — Employees Classification — Affordability — Age-Banding — Medicare — COBRA

# Compliance Issue

## Properly Classifying Your Employees

- Full-time employees
- Part-time employees
- Salaried employees
- Hourly employees
- Seasonal employees
- Temporary employees working for a staffing firm
- Employees working in the same geographic location  
*(generally, the same insurance rating area)*
- Foreign employees who work abroad
- Employees covered by a collective bargaining agreement
- Employees in a waiting period
- **A combination of two or more of the above**

### Compliance Issue

ERISA — Employees Classification — Affordability — Age-Banding — Medicare — COBRA



# Compliance Issue

## Offering a Traditional Group Plan AND an ICHRA

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### YES

You can offer both an ICHRA and A traditional group health plan

### BUT

You can only offer one OR the other to a particular employee class

(i.e., all full-time employees in New Jersey could get an ICHRA while all full-time employees in New York could get a group plan.)

### Compliance Issue

ERISA — Employees Classification — Affordability — Age-Banding — Medicare — COBRA

# Compliance Issue

## Determining Affordability

- » ICHRA affordability is pegged to the lowest cost silver plan premium
- » Penalties triggered if an employee is offered affordable coverage but still takes a premium tax credit (but you shouldn't have to pay this)
- » Safe harbors for determining affordability are:
  - W2
  - Federal Poverty Line
  - Rate of Pay

### Compliance Issue

ERISA — Employees Classification — [Affordability](#) — Age-Banding — Medicare — COBRA

## Compliance Issue

# Age-Banding & the Golden 3:1 Ratio

- » Yes, you can age-band when it comes to ICHRA—and you probably should to keep contributions equitable across your workforce.
- » You can age-band in 10-year, 5-year, or 1-year increments, or anything in between.
- » Just be sure you're not contributing more than 3x to our oldest employee as you are to your youngest employee in any one class.

## Compliance Issue

ERISA — Employees Classification — Affordability — [Age-Banding](#) — Medicare — COBRA

# Compliance Issue

## ICHRA & Medicare



- » Medicare is considered an individual plan under ICHRA
- » Can integrate with Parts A and B, or C
- » Avoids secondary payer reporting due to ICHRA anti-duplication clause

(i.e., under ICHRA, you can only have a Medicare plan, not a Medicare plan AND a group health plan)

### Compliance Issue

ERISA — Employees Classification — Affordability — Age-Banding — Medicare — COBRA

# Compliance Issue

## ICHRA & COBRA

- » ICHRAs are subject to COBRA  
You still need to extend an offer of COBRA

### BUT..

- » ICHRAs are portable  
It rarely makes sense to exercise COBRA rights and pay an additional 2% administrative fee

### WHICH MEANS...

- » Less administrative burden on you!

## Compliance Issue

ERISA — Employees Classification — Affordability — Age-Banding — Medicare — COBRA



# Implementing an ICHRA as a Large Employer

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





















Home Arizona Cardinals 100

## Enrollment

Open Enrollment - Closed - Aug 28, 2023 to Jan 5, 2024

Overall Progress: 6146 Total employees who have completed enrollment 13%

All Employees (46) Pending (40) Plan Election Completed (1) Waived All (5)

Employee ID	First	Last	Email	Status	Location	Days until deadline	Action
5432	sk	yopmail	skyopmail007@yopmail.com	Pending	CA	36	 
ems556798	Stacy	Smith	stacy109@surecolabs.com				 
Ems78978	Leanna	Tester	leanna1@yopmail.com				 
CensusTest35	Larry	Bird	devems_102alt@yopmail.com				 
SplitTest11	Bob	Eldercupkids	devems_64@yopmail.com				 
EmTest123456789001	Michael	Smith	devems_Berfi@yopmail.com				 
74328ufhdd	Danny	Ainge	devems_1000@yopmail.com				 
CensusTest41	Phonetest	Birdnoemail					 
CensusTest43	Phonetest	Aingenomail					 
SplitTestA23	Stanley	Roperaz	devems_92@yopmail.com				 
CensusTest40	Phonetest	Johnsonnophone	devems_120@yopmail.com				 

Rows: 40

**Send Reminders**

Re-send ICHRA notice  
Re-send welcome email  
Send reminder email

**Employer View**

Viewing 9 of 9 plans [Reset filters](#) [Hide filters](#)

**Carriers**

☐ Aetna CVS Health ☐ Ambetter ☐ EPO ☐ POS ☐ Up to \$0.00 ☐ Per paycheck

☐ AvMed ☐ Cigna ☐ HMO ☐ HSA

☐ Florida Blue ☐ United Healthcare ☐ PPO

**Plan types**

**Plan cost**

**My providers**

Dr. John Doe [Add provider](#)  
Dr. Jane Doe

**Employee View**

**Bronze (2 available)**

**\$23.21**  
Per paycheck (for 1 person)  
Aetna CVS Health  
Bronze S

**Silver (4 available)**

**\$35.33**  
Per paycheck (for 1 person)  
Ambetter  
Silver EPO

**Gold (1 available)**

**\$42.22**  
Per paycheck (for 1 person)  
Cigna  
Gold PPO

**Benefit Highlights**

**Prescription Drugs**

**Benefits Summary** [Compare](#)

[Add to My Benefits](#)

# The Role Your **ICHRA Administrator** Plays in Compliance

- » Affordability checks
- » Discrimination checks
- » ICHRA notices
- » Summary Plan Documents (SPDs)
- » Summary of Benefits & Coverage (SBC)
- » Plan payment substantiation
- » Accurate compliance reporting

# Compliance Issue

## Filling Out Your Forms

- 1094/1095-C
- 990 (for non-profits)
- 720 (PCORI)

600120

**Form 1095-C** **Employer-Provided Health Insurance Offer and Coverage**  
 Department of the Treasury  
 Internal Revenue Service  
 ▶ Do not attach to your tax return. Keep for your records.  
 ▶ Go to [www.irs.gov/Form1095C](http://www.irs.gov/Form1095C) for instructions and the latest information.

☐ VOID  
☐ CORRECTED  
 OMB No. 1545-2251  
**2023**

**Part I Employee** **Applicable Large Employer Member (Employer)**

1 Name of employee (first name, middle initial, last name) 2 Social security number (SSN) 7 Name of employer 8 Employer identification number (EIN)  
 3 Street address (including apartment no.) 9 Street address (including room or suite no.) 10 Contact telephone number  
 4 City or town 5 State or province 6 Country and ZIP or foreign po

**Part II Employee Offer of Coverage** **Employee's A**

14 Offer of Coverage (enter required code) All 12 Months Jan Feb Mar Apr  
 15 Employee Required Contribution (see instructions) \$ \$ \$ \$ \$ \$  
 16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)  
 17 ZIP Code

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form 720 (Rev. 3-2024) Page **2**

IRS No. Rate Tax IRS No.  
 33 Retail Tax—Truck, trailer, and semitrailer chassis and bodies, and tractor 12% of sales price 33  
 29 Ship Passenger Tax Number of persons Rate Tax 29  
 31 Other Excise Tax Amount of obligations Rate Tax 31  
 30 Foreign Insurance Taxes—Policies issued by foreign insurers Premiums paid Rate Tax IRS No.  
 Life insurance, sickness and accident policies, and annuity contracts \$ .04 } 30  
 Reinsurance .01 }  
 36 Manufacturers Taxes Number of tons Sales price 36  
 37 Coal—Underground mined \$1.10 per ton 4.4% of sales price 37  
 38 Coal—Surface mined \$ .55 per ton 4.4% of sales price 38  
 39 Taxable tires other than bias ply or super single tires Number of tires Tax IRS No.  
 108 Taxable bias ply or super single tires (other than super single tires designed for steering) 108  
 113 Taxable tires, super single tires designed for steering 113  
 40 Gas guzzler tax. Attach Form 6197. Check if one-time filing 40  
 97 Vaccines (see instructions) 97  
 1 Total. Add all amounts in Part I. Complete Schedule A unless one-time filing 2.3% of sales price \$

**Part II**

133 Patient-Centered Outcomes Research Fee (see instructions) (a) Avg. number of lives covered (see inst.) (b) Rate for avg. covered life (c) Fee (see instructions) Tax IRS No.  
 Specified health insurance policies (a) With a policy year ending before October 1, 2022 \$2.79 } 133  
 (b) With a policy year ending on or after October 1, 2022, and before October 1, 2023 \$3.00 }  
 Applicable self-insured health plans (c) With a plan year ending before October 1, 2022 \$2.79 }  
 (d) With a plan year ending on or after October 1, 2022, and before October 1, 2023 \$3.00 }  
 41 Sport fishing equipment (other than fishing rods and fishing poles) 10% of sales price 41  
 110 Fishing rods and fishing poles (limits apply, see instructions) 10% of sales price 110  
 42 Electric outboard motors 3% of sales price 42  
 114 Fishing tackle boxes 3% of sales price 114  
 44 Bows, quivers, broadheads, and points 11% of sales price 44  
 106 Arrow shafts \$ .62 per shaft 106  
 140 Indoor tanning services 10% of amount paid Rate Tax 140  
 64 Inland waterways fuel use tax Number of gallons Rate Tax 64  
 125 LUST tax on inland waterways fuel use (see instructions) \$ .29 .001 125  
 51 Section 40 fuels (see instructions) 51  
 117 Biodiesel sold as but not used as fuel 117  
 20 Floor stocks tax—Ozone-depleting chemicals. Attach Form 6627. 20  
 150 Repurchase of corporate stock. Attach Form 7208. 150  
 142 Sales of designated drugs during statutory periods. 142  
 2 Total. Add all amounts in Part II \$

Form 720 (Rev. 3-2024)

# Q & A

Find more on [sureco.com/compliance](https://sureco.com/compliance)

## More Questions?

Join "Office Hours"  
Tuesday March 19, 2024  
at 10AM ET / 1PM PT.



Jason Pappas  
Regional Sales Director, Northeast  
SureCo



Chris Pappas,  
Regional Sales Director, Southeast  
SureCo

# Thank You!

SureCo

## Contact Us



(866) 235-5515



[www.sureco.com](http://www.sureco.com)



[www.sureco.com/lets-meet-up](http://www.sureco.com/lets-meet-up)



201 Sandpointe Ave  
# 600, Santa Ana,  
CA 92707



[www.linkedin.com/company/sureco/](http://www.linkedin.com/company/sureco/)



[Info@sureco.com](mailto:Info@sureco.com)