

# Wading through the ACA

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## *A Practical Guide for Coding*

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I can still remember the faces of my colleagues – competitors really – sitting across the same table, bemused and bewildered at the prospects for ACA reporting in 2016. Most of us were like most of you, I imagine; wading through the ACA's reporting requirements with little more than a hope of avoiding an audit at some hypothetical time in the not-so-distant future. Seminar after seminar information was presented in much the same fashion: "here's what we know today; that could change soon; do your best and keep good records; it's not a matter of if you'll get audited, but when." As someone already intimidated by this new highly complicated and interrelated federal tax document that requires communication from multiple systems which must be reported electronically (we issue more than 250 1095-Cs, thus mandating electronic filing), learning that even my best efforts will still likely result in an IRS audit only heightened my sensitivity to the subject of proper coding of employees and accurate reporting.

I took the challenge head on and began the painful task of identifying what I knew, which was not much, and highlighting the gaps of where I needed to shore up information; thus beginning the composition of this article, even if I did not know it at the time. My hope herein is to provide you with a practical guide to several of the coding nuances with ACA reporting; that it may give you ammunition in your own endeavors or at least give comfort that your third-party processor is not leaving you a potential liability. My company is fully insured and we only provide 1095-Cs as a result. Consequently, the examples that follow pertain only to a full insured environment. If your company is required to produce 1094s and/or to track dependents in Part III of the 1095, then while this article may be of benefit for Parts I and II, you will still need additional support on those additional aspects of your 1095 coding. In the end, as the employer you are ultimately responsible for presenting the data accurately on employee forms and to the IRS; and in the end, however that information gets there, it is that form that rues the day either keeping the feds out of your office or inviting them in for a look around.

I preface the following by saying I am not an HR attorney; I am also not a CPA. Not that either should matter but please do not take anything I'm writing here to presume my legal knowledge nor understanding of the bowels of the tax code, which may or may not inform your tax planning. In fact, as I waded through the ACA for the first time, I consulted with several HR attorneys and CPAs, all of whom proclaimed an expert grasp of the subject of the Affordable Care Act and guaranteed their knowledge of how to report in all employee situations. I soon learned experts differ in their understanding of both law and the tax code; at times being at complete opposite ends of the spectrum.

As a humorous aside, in one seminar in particular I sat with bated breath to hear a highly respected HR attorney lay out the case for how to properly code several unique employee situations. The firm came with a long power point, handouts and a spaghetti diagram of coding (which I have attached with

permission from the author). As you will see, that diagram shows many different scenarios for union employees, part-time, seasonal, safe harbor, etc. The diagram was very helpful but the examples presented in the seminar did not align with several special cases for my company so much so that I contacted the expert for additional assistance. Later on, I occasioned to meet with one of the CPA firms we use and noticed the same diagram on his desk. Laughing, as if I had secret insider information, I posited, “you must’ve been at the same seminar I just attended.” His reply was an awkward, “oh. Why do you say that?” “Because,” I said, “I just got that diagram from an HR expert on the ACA and I’m using it for my own coding. Do you know much about that diagram, because I have a few special situations that don’t exactly align?” “KNOW IT!?” He replied, more animated than I’ve ever seen an accountant who moonlights as computer programmer, “I wrote it! Where did you say you got it?!”

That exchange eventually connected me with his firm’s ACA expert who was a CPA and assisted employers with ACA audits. He answered several of my questions in exactly the opposite manner as the HR attorney! From then on I knew I was basically on my own. If the lawyers and accountants cannot square the law with their fields of study, my best case scenario is to go get the information as best I can, keep good records, and hope they are good enough to stave off any kind of audit...or at least defend it.

I believe I have succeeded; and I share this experience with you in hopes of your success whether you are new to ACA reporting or have nagging questions that no one seemed capable of answering. Below are several nuanced situations to assist you as you prepare to code your employees for the next go-round or validate the prior. The goal here is not to make you experts, but it is certainly wise to be functionally literate in this subject to ensure your company remains in good standing. Good luck to us all.

One last aside, as I write this the 2016 election is over and the victorious party continues to bang the drum for repeal. The reality is, even if repeal were possible, it likely will not happen before this required annual filing and even then, repeal does not necessarily mean elimination of the reporting requirements. To that end, let’s assume the reporting of healthcare for employees will continue.

## **The Bear Necessities**

The IRS has minimum standards for health coverage for which employers who employ 50 or more full time equivalent employees (so called Applicable Large Employers or ALEs) must offer to employees who qualify. Seasonal employees (many interns fall into this category) and part-timers – those working fewer than 30 hours per week on average or less than 130 hours per month – do not qualify for health coverage and the ACA has provisions to account for them. For everyone else, ALEs must make an offering of healthcare in each month the employee is eligible (i.e. each month the employee is not a seasonal employee or part-time per the ACA’s definition) and that offering must be considered Minimal Essential Coverage (MEC), and also meet Minimum Value and affordability criteria.

It is likely your company’s plan meets the MEC standard if you are offering a group plan.

A plan provides minimum value if it covers at least 60 percent of the total allowed cost of benefits that are expected to be incurred under the plan. Your Carrier will provide an Actuarial Value rating for fully insured plans and a Third Party Administrator can provide this calculation for self-funded plans.

If an employee's share of the premium for employer-provided coverage would cost the employee more than 9.66% of that employee's annual household income, the coverage is not considered affordable for that employee. Because employers generally will not know their employees' household incomes, employers can take advantage of one or more of the three affordability safe harbors set forth in the final regulations that are based on information the employer will have available, such as the employee's Form W-2 wages or the employee's rate of pay. If an employer meets the requirements of any of these safe harbors, the offer of coverage will be deemed affordable for purposes of the Employer Shared Responsibility provisions regardless of whether it was affordable to the employee for purposes of the premium tax credit.

The three affordability safe harbors are (1) the Form W-2 wages safe harbor, (2) the rate of pay safe harbor, and (3) the federal poverty line safe harbor. These safe harbors are all optional. An employer may use one or more of the safe harbors only if the employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan that provides minimum value for the self-only coverage offered to the employee. An employer may choose to use one or more of the safe harbors for all of its employees or for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category. If an employer offers multiple healthcare coverage options, the affordability test applies to the lowest-cost self-only option available to the employee that also meets the minimum value requirement.

The Form W-2 wages safe harbor is generally based on the amount of wages paid to the employee that are reported in Box 1 of that employee's Form W-2. The rate of pay safe harbor is generally based on the employee's rate of pay at the beginning of the coverage period, with adjustments permitted, for an hourly employee, if the rate of pay is decreased (but not if the rate of pay is increased). The federal poverty line safe harbor generally treats coverage as affordable if the employee contribution for the year does not exceed 9.66% of the federal poverty line for a single individual for the applicable calendar year. The FPL safe harbor is generally regarded as the safest safe harbor (the most penalty proof) so we will provide some further examples below.

As noted above, affordability can be met when the employee's share of their healthcare premium for employee-only coverage is lower than \$95.63 per month (in 2016). This calculation is specific because it is derived from the Federal Poverty Level (FPL), which was \$11,880 in 2016 and the ACA requires affordability to be 9.66% of the FPL. In other words,  $\$11,880 \times 9.66\% / 12 = \$95.63$ .

So that's the math but what does it mean? In layman terms, if an employee elects family coverage, or employee + spouse, or employee + child, or whatever other derivation you may offer, you as the employer have to be able to look at your employee and say, "you can buy employee only coverage for \$95.63 per month; our plans that offer dependent coverage are more expensive, but you can elect

employee only coverage for \$95.63 per month.” It does not mean you must offer the employee portion of family coverage for any particular amount, or that you must cost share some amount of family coverage for at a higher percentage. It only means you must have an offering of coverage for employees only and the employee share of that coverage for employee only cannot exceed \$95.63 per month.

Remember, this only addresses the employee’s share of the premium. The total premium paid to the carrier (Anthem, United Healthcare, Aetna, to name a few) can be and likely are more than that amount. If you are like many employers I interact with, you probably share the cost of healthcare premiums at 80/20 or 70/30, and you may weight the percentages higher to employee only coverage than dependents. For example, you may be a 70/30 employer but that’s an all in number. You may pay 100% or 50% of employee only coverage and only 20% of family coverage. You may pay 28% of employee + spouse but only 26% of employee + child(ren). In the aggregate, however, you pay 70% of the total premium paid to the carrier and in the aggregate, employees pay 30%.

So in the spirit of one of my old finance professors, let’s work an example. If your total premium for employee only coverage is \$350/month and you cost share 30% of the premium with the employee, your premium, as the employer is \$245 per month and the employee’s share is \$105 per month. In that scenario your plan does not meet the FPL affordability safe harbor because the employee is paying more than \$95.63 per month. You would need to take on more of the burden of the premium so the employee pays \$95.63 or less per month. If, however, you only charge your employee 20% of the total premium for employee only coverage, your premium, as employer is \$280 per month and the employee’s share is \$70 per month. In that scenario your plan does meet the FPL affordability safe harbor.

As a benefit to employers who offer High Deductible Health Plans (“HSAs”), affordability is taken off the HSA employee only premium. This is a huge benefit because HSAs are typically less expensive than a traditional PPO plan so that affordability is more easily achieved. If your company is like ours, and you offer both PPO and HSA options to your employees, the less expensive premium of the HSA is your marker. So to continue the example from above if you cost share 30% of the premium with your employees and the total premium for your PPO plan is \$350 per month, such that the employee’s share is \$105 per month as described above. But you also offer an HSA and the total premium on that offering is only \$275 per month. Thirty percent of the HSA premium is \$82.50 and qualifies for the FPL safe harbor. This means you may not necessarily need wild swings in your plan offerings or cost sharing, but need to look at other types of offerings with lower total premiums. Many companies offer multiple plan offerings including several tiers of PPOs and/or several tiers of HSAs. Affordability is determined from the lowest employee only coverage your company offers as long as that plan offering still meets the Minimum Value criteria.

Enough about Affordability; let’s move on to some practical coding examples.

## The Easy Stuff

Even the most complicated of tasks has low hanging fruit so let's get that off the table because these impact the majority of your employees, and are not the situations that keep anyone up at night.

### Part-Timers

Workers who work fewer than 130 hours per month do not qualify for benefits under the ACA. They do not need a 1095-C at all. Without getting too far off topic in the new FLSA regulations and classifications you should be mindful of who is truly part-time on your workforce and who is slipping into overtime hours and bringing them into eligibility for insurance. A reaction to the ACA by some retail employers was to reduce work hours to 29 hours per week to keep part-time employees from becoming eligible for benefits. Perhaps the reaction to that was a far more employee friendly FLSA standard which will increase the number of employees who receive overtime pay and may bring more part-timers into eligibility with better timekeeping. While an entire article could be devoted to that topic alone, I offer it here as something to consider because that part-timer who is on your books at 29 hours but is checking email and making phone calls and generally "working" after hours, may have to log those hours under FLSA and could bring their hours up each week and into a benefits-eligible status under the ACA.

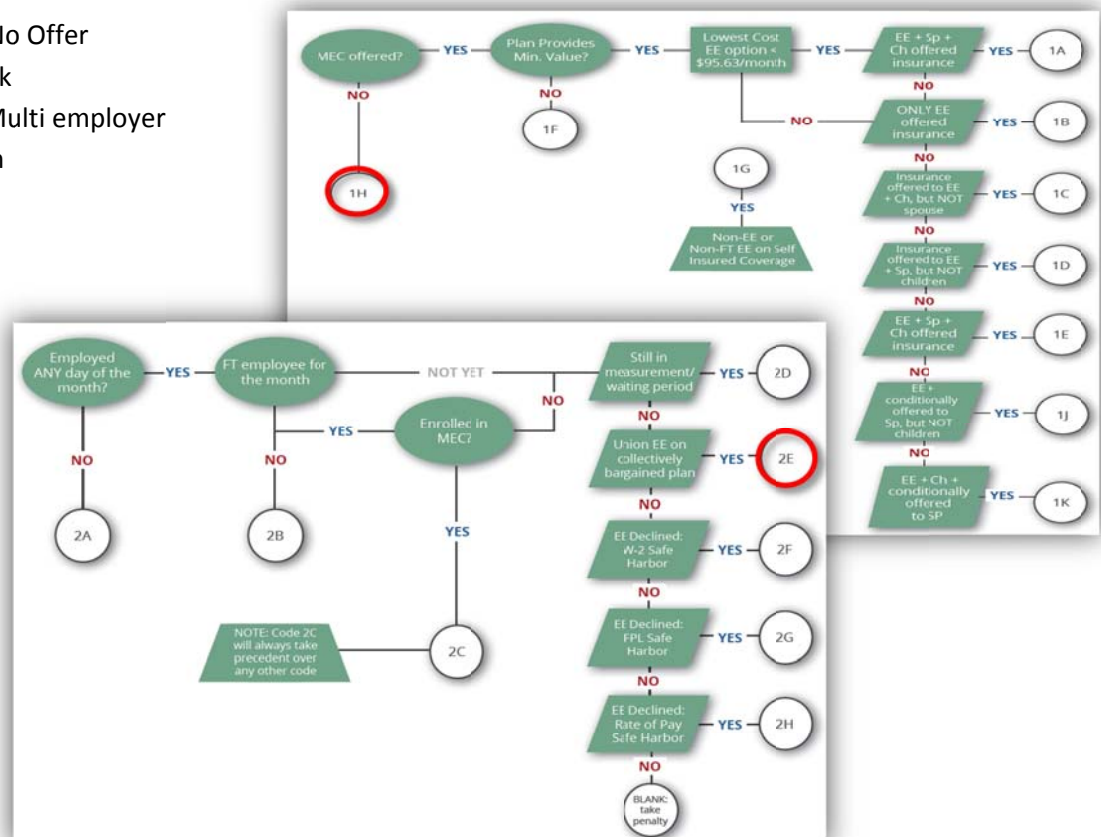
### Union Workers

You should check with your union, but in general unions provide healthcare coverage as part of the employee's fringe package. As a result, the union will report to the government who was covered. As the employer, you need only report which of your employees were considered Full-Time in each month. Union workers may roll on and off payroll and therefore may be Part-Time in some months and Full-Time in others. You must provide a 1095-C to any worker who worked Full-Time in at least one month of the calendar year. For each month the worker was Full-Time, do the following on your 1095-C:

Line 14 – 1H No Offer

Line 15 – Blank

Line 16 – 2E Multi employer plan



Because the Union Worker has a plan with MEC through their Union, no MEC is offered to them from the employer; so they receive no offer of insurance. On the next diagram you see the steps to get to their line 16 code of 2E.

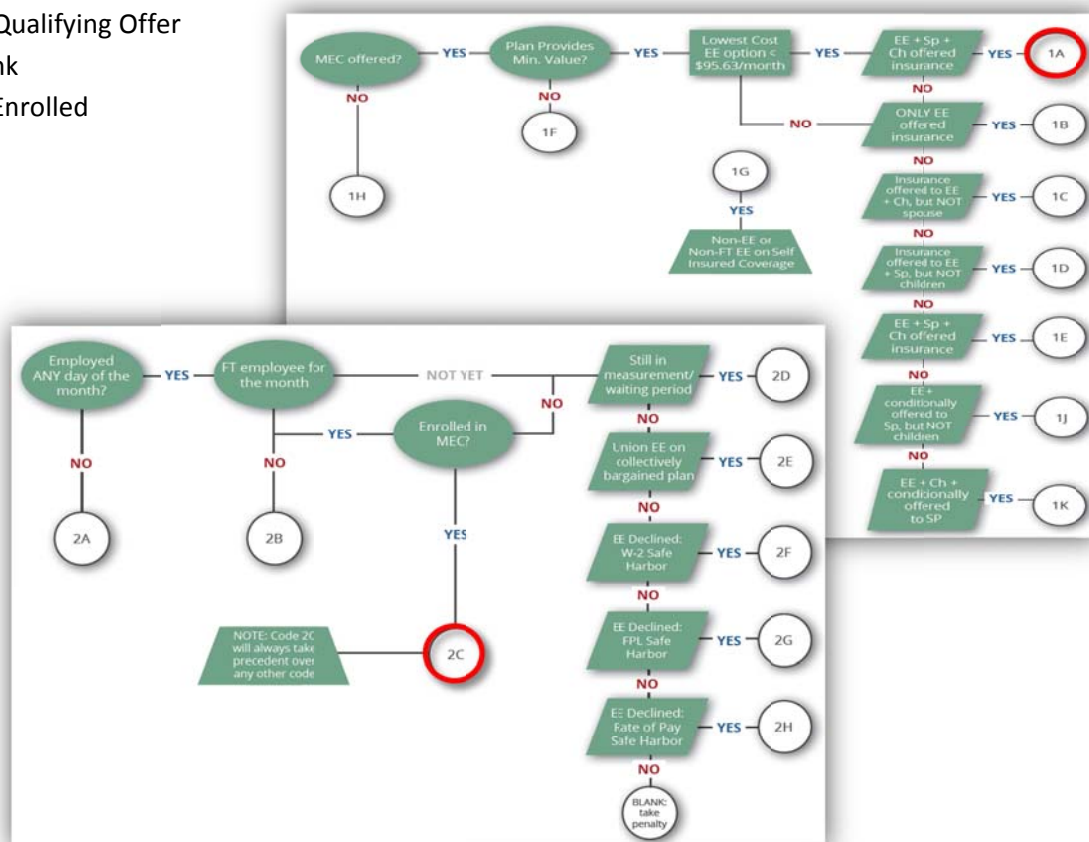
### Full-Timers Who Elect Employer Coverage

Full-Timers are employees who work 130 hours or more in at least one month of the year. Under the monthly measurement method for every month they work 130 hours or more, they must be offered healthcare benefits under the ACA. The easiest Full-Timers to code are your office-based, salary folks who are just strait up 40 hours a week, week after week. For those employees, code like this on your 1095-C if you are utilizing the FPL affordability safe harbor:

Line 14 – 1A Qualifying Offer

Line 15 – Blank

Line 16 – 2C Enrolled



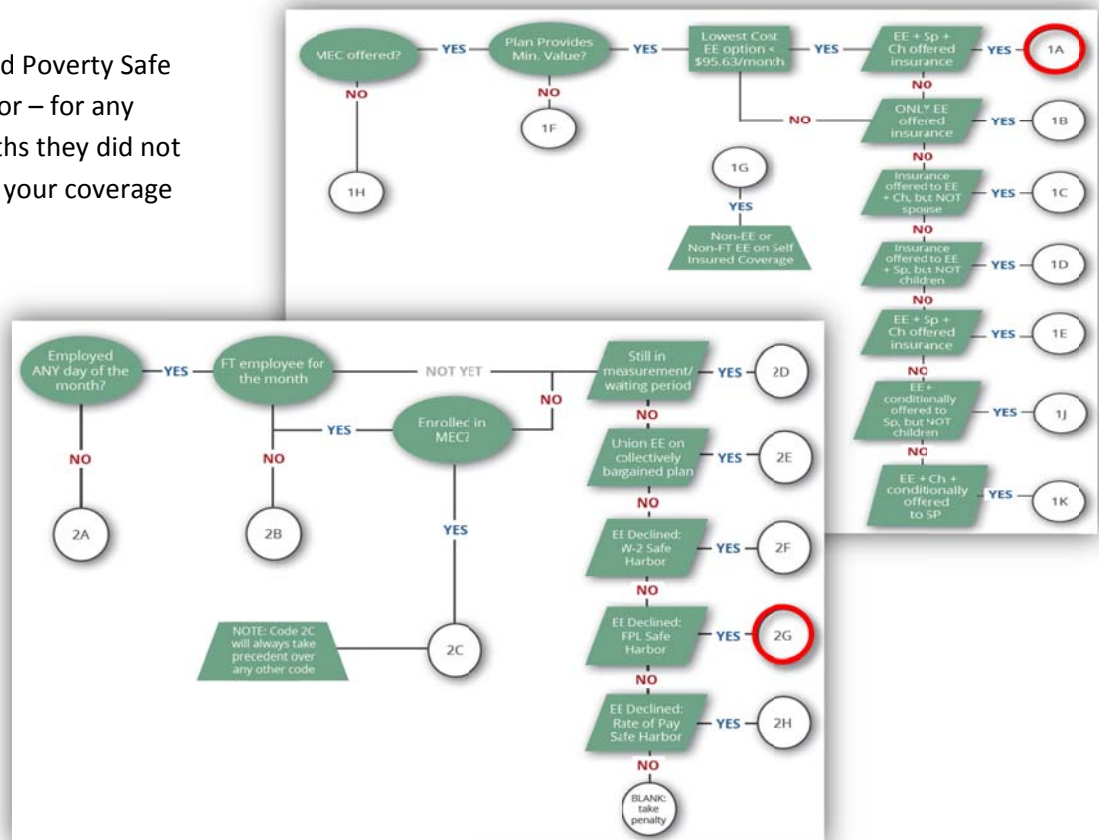
## Full-Timers Who Do Not Elect Employer Coverage

In most cases these are employees who are on their spouse or parent's plan or who otherwise have coverage someplace else. If your company has a Fiscal Year plan where the plan does not run January 1<sup>st</sup> through December 31<sup>st</sup>, you could have employees who were on your plan for part of the year and then jumped off mid-year. This could also happen if the employee had a "Qualifying Event" mid-year and left your plan as a result. The most common qualifying event that I see taking employees off our plan is marriage in which the new spouse's coverage has a better premium or lower deductible or some other feature the employee desires. For whatever the reason, Full-Timers who leave your plan should be coded as follows if you are utilizing the FPL affordability safe harbor:

Line 14 – 1A Qualifying Offer

Line 15 – Blank

Line 16 – 2G Fed Poverty Safe Harbor – for any months they did not elect your coverage



## Let's Kick it up a Notch!

Ok. We've mastered the easy stuff, now let's get a little more complicated and we'll start with complicated Full-Timers.

### Full-Timers Who Start Mid-Month

Don't you wish all employees could just start at the same time and quit at the same time? Wouldn't life be so much more boring and simple? The ACA believes so too and the 1095-C wants you to stay on your toes. Consequently, Full-Timers who start mid-month are probably in a waiting period and even though



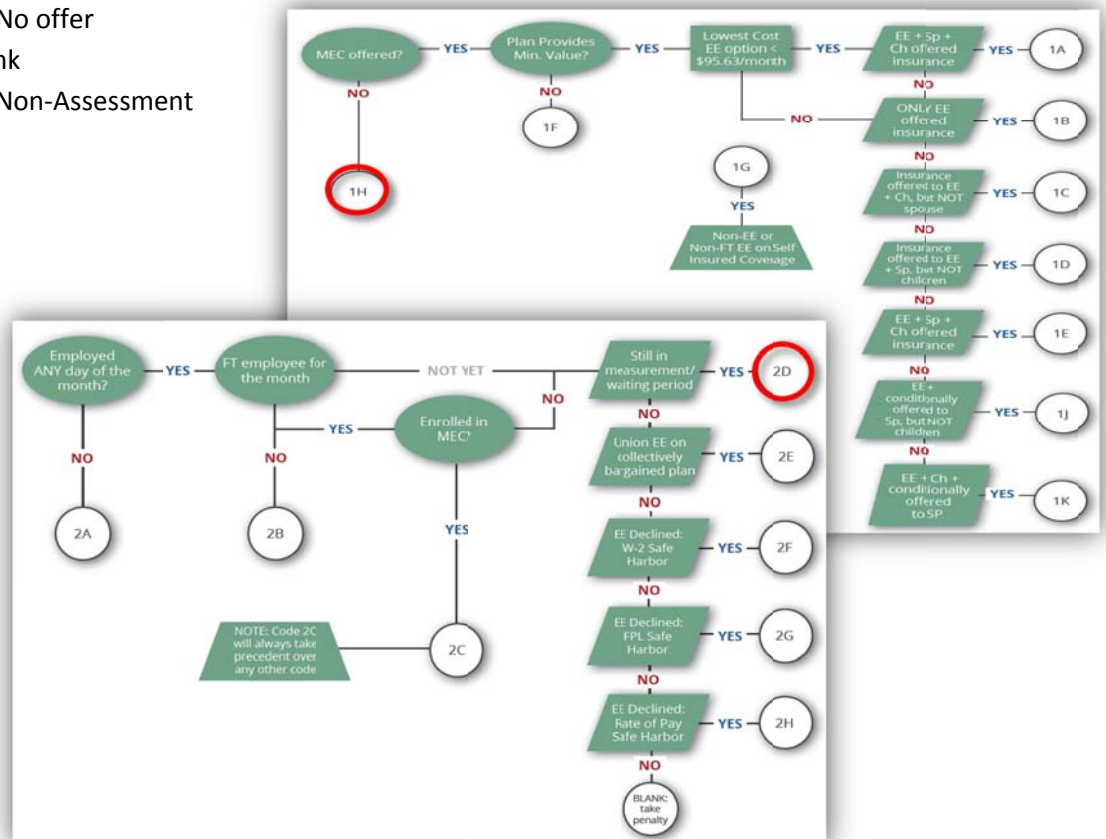
working full time are not yet eligible for benefits. Whether your waiting period for eligibility is 30 days, or the first day after 30 days of employment, or some other longer or shorter wait, they still need to be coded for that month on the 1095-C. Unfortunately, the ACA does not have a name for “waiting period”. Instead they use a code-word called “Non-Assessment”. Personally, I like the term “waiting period” or even better, “not yet eligible.” But that’s why I write articles and not public policy. Shall we continue?

For employees whom are employed full time but not yet eligible (ACA limits waiting periods to a maximum of 90 days), code them as follows:

Line 14 – 1H No offer

Line 15 – Blank

Line 16 – 2D Non-Assessment





## Full-Timers Who Start Mid-Year

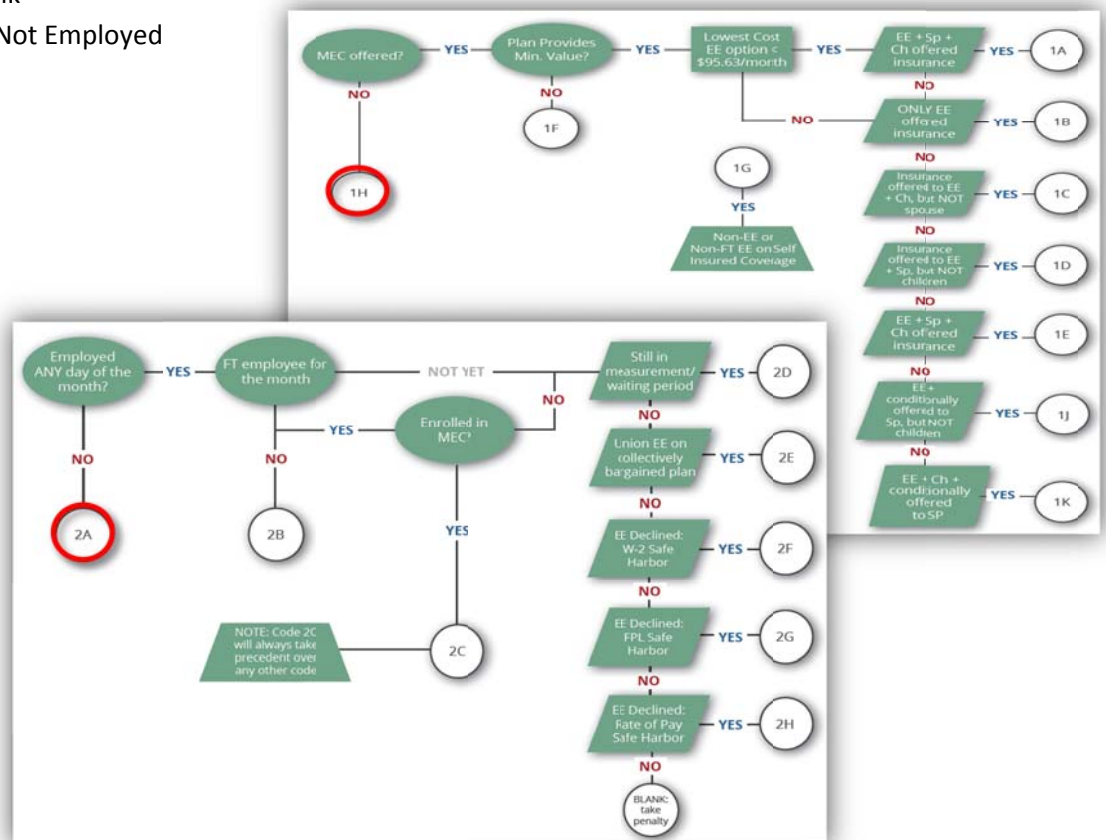
As above, employees who start mid-month or mid-year were not employed with your company on January 1<sup>st</sup>. The bottom line here is employees must have a 1095-C for all 12 months if they worked Full-Time for at least one month.

For all months prior to employment code them as follows:

Line 14 – 1H No Offer – for all months prior to employment

Line 15 – Blank

Line 16 – 2A Not Employed



After their employment commences, code them pursuant to the notes above for Full-Timers who elect employer coverage, Full-Timers who do not elect coverage and Full-Time but not yet eligible.

## Full-Timers Who Work Part-Time For Part of the Year

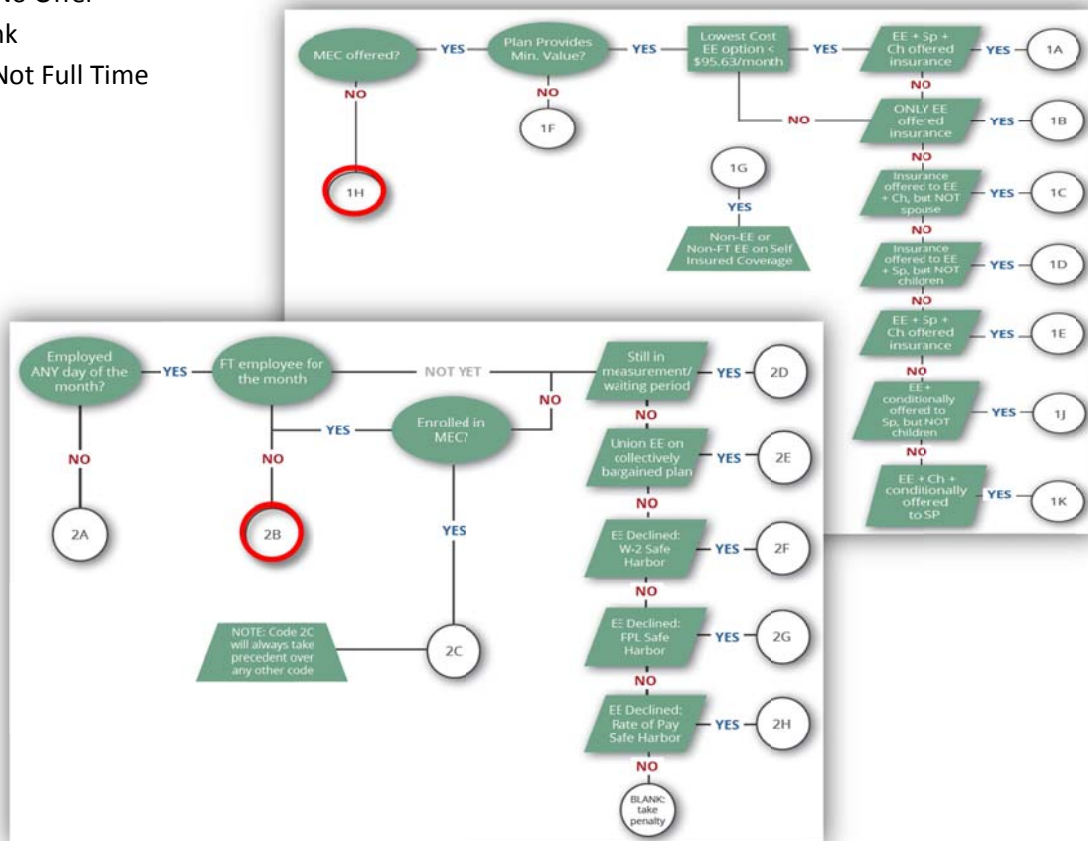
As we discussed earlier, Part-Timers who work less than 130 hours in a month are not eligible for benefits under the ACA. However, there are occasions where a Part-Timer will become a Full-Timer. Perhaps you had a job opening that a Part-Timer applied for or perhaps you had an employee who worked for you part-time while they finished up school. Whatever the reason, any months an employee works more than 130 hours they are eligible for benefits.

In general, however, for those months they are truly part-time they are coded as follows:

Line 14 – 1H No Offer

Line 15 – blank

Line 16 – 2B Not Full Time



Under the monthly measurement method if a Part-Timer works 130 or more hours in a month they are considered full-time and they are eligible for benefits. In those months they would be coded as follows:

Line 14 – 1H No Offer

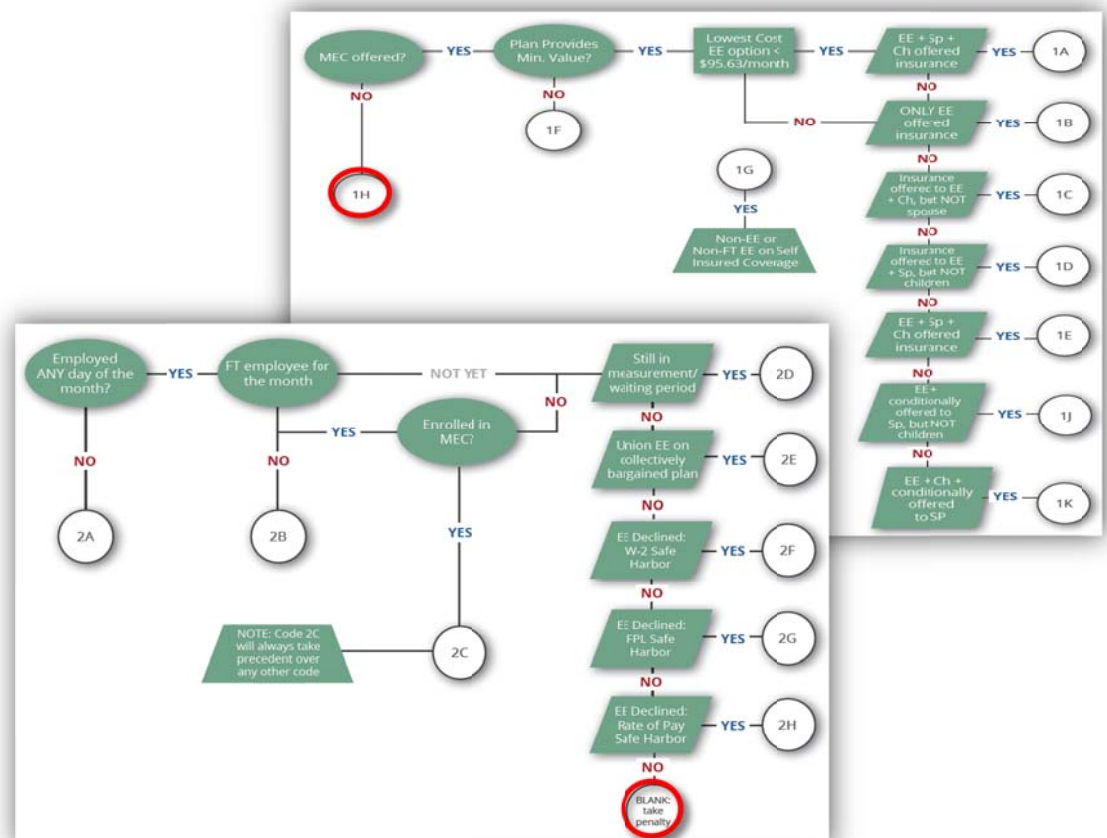
Line 15 – Blank

Line 16 – Blank, which means we may have a 4980H (b) penalty (the so called tack hammer or small penalty) relating to that specific employee for that specific month

Now, I'm not one to throw up my hands and take a penalty, but in all reality, letting the IRS find this coding on the one or two employees who would cause a penalty is very likely to be far less costly than hiring a person to manage the deluge of ACA coding through the year. However, you must insure that

you offer coverage to 95% of eligible employees at a minimum each month to avoid the imposition of the 4980H (a) penalty (the so called sledgehammer or big penalty) on all of your full time employees.

As we think of benefits, they are offered when an employee starts work. However, under the ACA, benefits can be offered after the month is over and applied retroactively. My company is not faced with that scenario so I do not have a practical answer for how to manage offering an employee benefits after they had a claim because they worked 130 hours in a month. If your company has many employees who ride the line of part-time or full-time, you may want to hire someone to keep you flush with the regulations and ensure your Part-Timers who are considered full-time in a given month are handled appropriately. Alternatively, you may want to consider utilizing the look-back measurement method. For companies where that number of part-time employees is zero or very low, the cost of the additional overhead may not be worth the benefit of the expense.



## Seasonal Workers and interns

Which company can survive without interns? I personally believe a good internship program is critical to long-term bench strength and furthermore gives perennial opportunities to teach, which only strengthens competencies of those employee/teachers.

Interns are relatively easy to code under the ACA but there is a caveat. The ACA does not have an "Intern" classification; instead the term "Seasonal" is used. This is an important distinction because an Intern could intern for your company for several years or perhaps you offer a co-op program where the

employee works a semester and goes to school a semester. If the school is on quarters, trimesters, or if the student attends year 'round, they may move from not eligible to eligible.

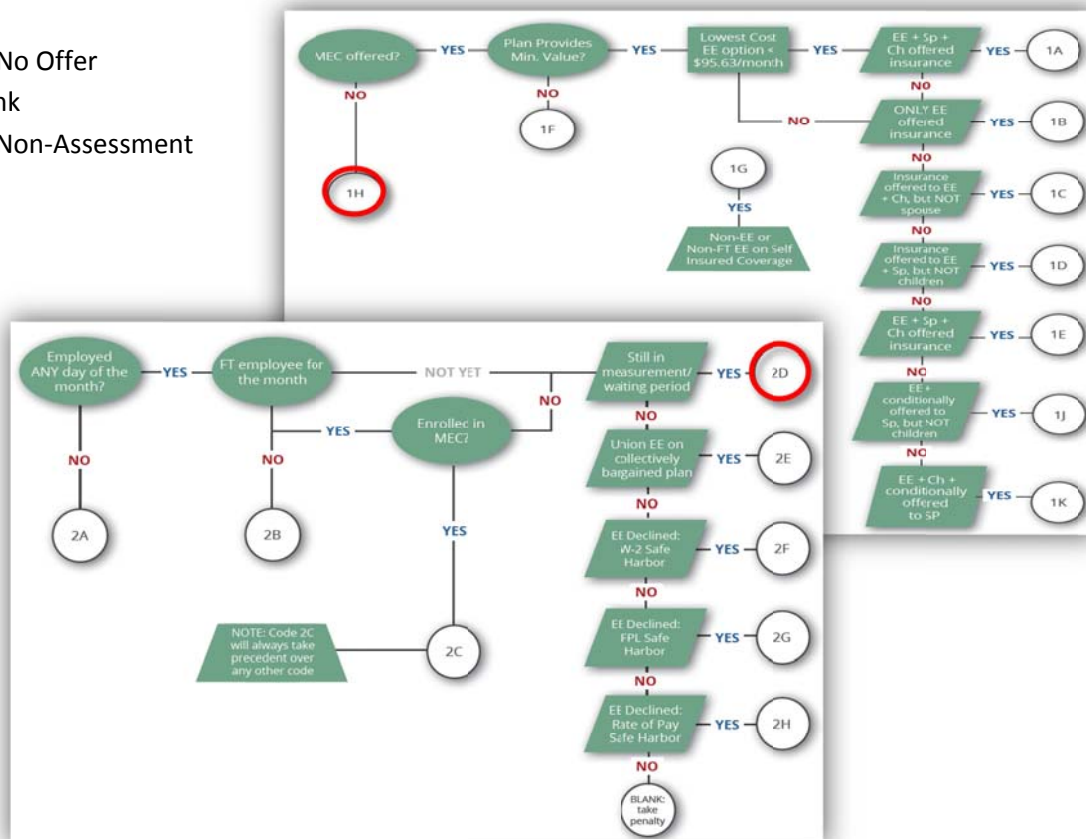
As a result, Interns are considered Seasonal employees if their internship is 6 months or less. If their internship extends beyond 6 months, they are considered part-time or full-time depending on the number of hours they worked that month. Now, before you start getting creative, the ACA has thought through this pretty well. The six months does not have to be consecutive. If an employee “interns” every other month for the year, that’s six months; three-on-three-off is six months; four months during the summer plus breaks during the year (Spring Break, Fall Break, Christmas Break, etc.) could all add up to six months; and remember if they work more than 130 hours in a month after their six month internship, they are full time under the monthly measurement method. An intern who works part-time during the year and comes to work full-time during their Spring Break, may crossover 130 hours for that month. Add a full-time internship in the summer and your intern may cross 130 hours in four months (May, June, July, and August) depending on how many hours they work. If they get a two week fall break and work long hours, they could have just met their six months of full-time work in the year with Christmas Break to go and now you owe them benefits if they exceed 130 hours in any other months remaining in that year.

Interns work full- or part-time and as long as the intern has not exceeded six months, code them as follows:

Line 14 – 1H No Offer

Line 15 – Blank

Line 16 – 2D Non-Assessment



For all months after the six months, use the notes on how to code Full-Timers and Part-Timers above.

## Interns Who Get Hired to Work Full-Time

If you use internships as a way to evaluate a potential full-time hire, the ACA will be coded a bit differently. For all months they were interns as described above, you should code them as being in the waiting period or as Full- or Part-Timer. Once they convert to a regular full-time employee they enter a waiting period just as in the Full-Timer notes above.

So an intern could potentially be the most complicated employee because they can span several different types of ACA coding. During their internship they do not receive an offer of coverage because they are considered “Non-Assessment”. If you hire them full-time, even if that is after six months of an internship, they now enter the Full-Timer waiting period and are again as No Offer and 2D Non-Assessment until their waiting period is over pursuant to your company’s plan documents.

## Covered Employees Who Leave and Elect COBRA

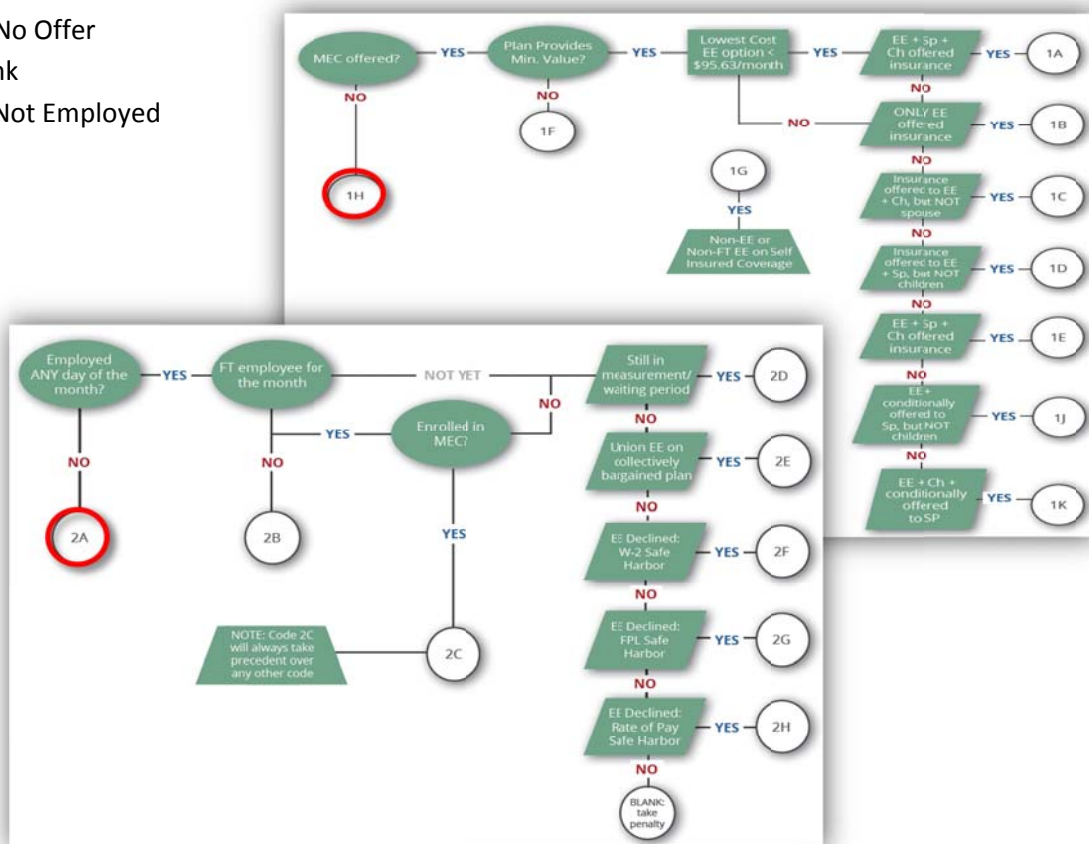
Employees who leave your company and elect COBRA are required to get a 1095-C for the immediate prior year. If they have been off the company payroll for more than 12 months, they do not need a 1095-C, even if they remain on your COBRA policy. Before they leave, code them according to the notes above for whatever classification they fall under.

After they leave, code them as follows:

Line 14 – 1H No Offer

Line 15 – Blank

Line 16 – 2A Not Employed



### **A Word Regarding the Treatment of Owners:**

Sole proprietors, partners, 2% or greater S-corporation shareholders, and corporate directors with respect to their director duties are not common law employees. Therefore, none of those individuals (or those who are deemed to be related parties under ownership attribution rules like spouses) should be counted in determining ALE status. Also, none of the aforementioned coding requirements would be required to receive a Form 1095-C. In other words, these folks don't need a 1095-C, take a breath and relax.

However, any owner in a regular C-Corporation would be treated exactly the same under the ACA as any other employee.

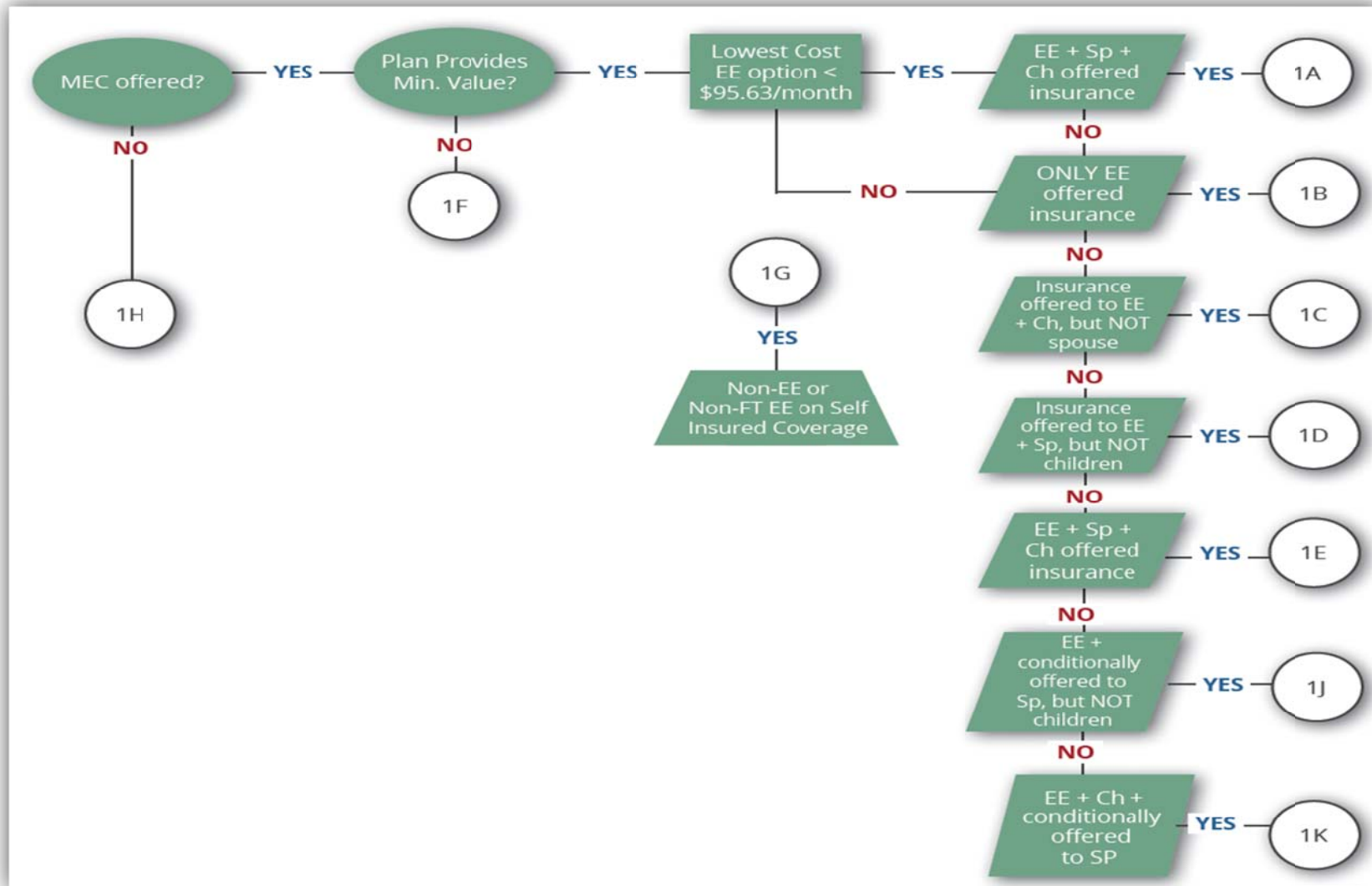
### **Conclusion**

Well that's it! Nothing more complicated than that. You may still have questions or special circumstances we haven't discussed herein, but I hope you found this article a great start down the road of wading through the ACA with practical guidelines for coding.

Now, go forth and prosper.



## Codes for Line 14





## Codes for Line 16

