

IRS to Send ACA Penalty Letters by End of Year

The employer mandate, sometimes known as the “play or pay” clause of the ACA, imposes penalties on Applicable Large Employers (ALEs) if any of their full-time employees purchases individual coverage at the Health Insurance Marketplace (also known as an Exchange) and receives a premium tax credit while doing so for any month in the calendar year, beginning in 2015. You may remember that 2015 was a transition year in defining ALEs. In that year, an ALE was defined as 100 or more full-time plus full-time equivalent employees, whereas starting in 2016 an ALE was defined as one with 50 or more. Further, in 2015 in order to be considered “offering health coverage” an ALE was only required to offer such coverage to 70 percent or more of its full-time employees and their eligible dependents (excluding spouses). Beginning in 2016, the threshold to be considered offering coverage was at least 95 percent of all full-time employees.

For 2015, an employer could face a penalty of \$2,080 for all of its full-time employees (less the first 30) if it was deemed to not be offering coverage, or \$3,120 for each employee who received a premium tax credit if it did

meet the 70 percent offering threshold that year.

On November 2, 2017, the [IRS announced](#) its program to notify employers of a potential penalty under this provision for calendar year 2015. The so-called [226J letters](#) will begin arriving in employers’ mailboxes by the end of the year. The letters are generated from the Form 1094-C and 1095-Cs received by the IRS, and compared with employees’ individual tax returns, as well as any 1095-A forms received by the IRS from the Exchanges.

More alarming, employers will only have 30 days from the date the 226J letter was mailed by the IRS to respond either accepting the penalty or disputing the penalty in whole or in part.

The IRS Penalty Process

1. The IRS will notify an employer of potential liability for an employer shared responsibility payment via Letter 226J. The letter will list, by month, the employees who received a premium tax credit and provide the proposed penalty. It will also provide the employer shared responsibility response form (Form 14764) and the name and information for a specific

IRS employee to contact with any questions.

2. ALEs will have just 30 days from when the Letter 226J was dated to respond before the IRS demands payment. The ALE's response can either agree with the proposed assessment or disagree in whole or in part.
3. The IRS will acknowledge the ALE's response with Letter 227, which describes further actions the employer may need to take.
4. If the employer disagrees with the proposed or revised assessment in

Letter 227, the employer can request a pre-assessment conference with the IRS Office of Appeals. Conferences will generally take place 30 days from the date of Letter 227.

If the employer doesn't make a timely response to the Letter 226J, the IRS will demand payment in the proposed amount through Notice CP 220J. Assessments are due once that Notice is received.

Due to the extraordinarily tight response times required, employers are urged to be prepared to research and respond almost immediately to any 226J letters they receive.

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