

News & Types: Employment, Labor & Benefits Update

# BENEFITS EDGE "Information is Power": IRS Starting to Send Penalty Notices Under the Affordable Care Act

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Practices: Employment, Labor & Benefits

## IRS STARTING TO SEND PENALTY NOTICES UNDER THE AFFORDABLE CARE ACT

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### EXECUTIVE SUMMARY:

Recently, the IRS updated Q&A's on the employer shared responsibility provisions. As a result, employers may receive a letter from the IRS in the next several weeks relating to the employer's group health plan, and setting forth a preliminary calculation of the employer shared responsibility payment which the IRS has determined may be owed under the Affordable Care Act. Please alert your Human Resources, Benefits, and/or Administrative team. If your company receives an assessment letter, it will need to respond to the IRS in a relatively short period of time. Your response will likely require the assistance of the third-party organization that prepared the ACA reports that were provided to the IRS.

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On November 2, 2017, the IRS updated its Q&As on the employer shared responsibility provisions under the Affordable Care Act by adding questions 55 through 58 relating to "Making an Employer Shared Responsibility Payment."

According to the Q&As, the IRS will issue Letter 226J to an applicable large employer ("ALE") if it determines that an employer shared responsibility payment ("ESRP") may be owed and the proposed amount of the ESRP. The IRS determination will be made based upon information reported to the IRS on Forms 1094-C and 1095-C along with information about full-time employees of the ALE who were allowed a premium tax credit.

The IRS has taken another step toward enforcement by releasing a sample Letter 226J. A copy of the sample letter can be found at [this link](#). The sample letter indicates that Letter 226J will also include (i) Form 14764 which is the form an ALE will use to respond to the IRS, regardless of whether it agrees or disagrees with the assessment, and (ii) Form 14765 which will include a list of the ALE's assessable full-time employees for the applicable year.

According the Q&A 58, the IRS intends to start notifying employers of their potential liability for an ESRP for calendar year 2015 in late 2017.

An ALE will have the opportunity to respond to Letter 226J before an ESRP liability is assessed and a notice and demand for payment is made. However, it is important to note that if the ALE disagrees with the amount of the ESRP proposed by the IRS, the ALE must respond by the response date shown on Letter 226J which, according to Q&A 55, will generally be 30 days from the date of the letter. If the ALE does not respond within the 30-day time frame, the IRS will assess the proposed ESRP.

Even if you believe that you will not be subject to ESRP payment, there is always a possibility that an ALE could receive a letter. For example, if an item on the Form 1094-C is left blank or improperly completed, it could result in a proposed assessment. Accordingly, ALEs should be on the lookout for a Letter 226J and promptly take steps to review the Letter 226J and respond.