

ACA Employer Mandate Penalty Letters Coming Before Year-End!

Labor & Employment Law Update

By Kelly Haab-Tallitsch on December 7, 2017

With only 30-days to respond, employers should be watching their mail for Affordable Care Act (ACA) employer mandate penalty letters (**IRS Letter 226J**), coming before the end of 2017.

Recent updates to the “Questions and Answers on Employer Shared Responsibility Provisions (ESRPs) Under the Affordable Care Act” on the Internal Revenue Service (IRS) website indicate the agency is gearing up to begin enforcement of the ESRP provisions of the ACA, commonly known as the employer mandate. According to Q&As 55-58, “Making an Employer Shared Responsibility Payment,” the IRS will start sending penalty notices in “late 2017” to employers whom the IRS believes may owe penalties for not complying with the ACA employer mandate in 2015. Penalties will be proposed and assessed via Letter 226J.

The determination of whether an employer is liable for a penalty and any proposed amount is based on the information reported to the IRS on Forms 1094-C and 1095-C and information on which full-time employees received a premium tax credit. The 2015 information reporting process was not without problems and it is possible employers who complied with the employer mandate may receive IRS 226J letters due to reporting errors or other issues.

Employers have the opportunity to respond to a Letter 226J within 30 days, prior to official assessment of liability and demand for payment.

I received a Letter 226J...Now What?

1. **Review the letter and enclosed information carefully.** Letter 226J will include information showing your proposed penalty by month and a listing of employees that received a premium tax credit.
2. **Compare with your records.** Review the Forms 1094-C and 1095-C you filed for 2015, and other relevant records.
3. **Complete and return the Form 14764 included with your Letter 226J within 30 days.** Include any supporting documentation.

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- If you *agree* with the IRS's penalty determination:
 - Complete Form 14764 indicating your agreement.
 - Include payment for the penalty (or pay electronically). If you do not pay the entire penalty amount, the IRS will issue a Notice and Demand for payment.
 - If you *disagree* with the IRS's penalty determination:
 - Complete Form 14764 indicating your disagreement.
 - Include a signed statement explaining why you disagree with part or all of the proposed penalty.
 - Include any documentation supporting your statement (i.e. date of employment termination records, proof of offer coverage or premium amounts).
 - Make changes, if any, to the Employee PTC Listing enclosed with your Letter 226J and submit with Form 14764.
4. **The IRS will acknowledge your response with a Letter 227** describing any further actions you may need to take.
 5. **If, after receipt of Letter 227, you still disagree with the proposed or revised penalty,** you may request a pre-assessment conference with the IRS Office of Appeals within 30 days. Instructions on requesting a pre-assessment conference will be included in the Letter 227. Upon receipt of your request, the IRS will contact you to arrange the time and place of the conference. According to IRS Publication 5 *"Your Appeal Rights and How To Prepare a Protest If You Don't Agree,"* conferences with Appeals Office personnel are held in an informal manner by correspondence, by telephone or in-person.

Bottom Line

Failure to timely respond to a Letter 226J can result in steep penalties for employers – even those who complied with their responsibilities under the ACA. Be sure to closely watch your mail this holiday season.