ACA Employer Shared Responsibility Payments

Frequently Asked Questions for Employers

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Applicable Large Employers need to be on the lookout for IRS Letter 226J and be prepared to respond to Letter 226J, if received. In this letter, the IRS lets Applicable Large Employers know the IRS has determined that, for at least one month in the year, one or more of the ALE's full-time employees was enrolled in a qualified health plan for which a premium tax credit (PTC) was allowed, and the ALE did not qualify for an affordability safe harbor or other relief for the employee.

Q1. What did the Internal Revenue Service (IRS) announce about Affordable Care Act (ACA) penalties?

A1. On November 2, 2017, the IRS announced it would be sending employer shared responsibility payment notices **(Letter 226J)** to certain applicable large employers (ALEs) for calendar year 2015 by the end of 2017. The IRS made this announcement by updating their **Questions and Answers on Employer Shared Responsibility Provisions under the Affordable Care Act** on the IRS website. See ADP's *Eye on Washington*, **New IRS Guidance on ACA Employer Shared Responsibility Assessments for 2015**, for more information.

Q2. How will the notices be sent?

A2. The IRS is sending **IRS Letter 226J** by U.S. mail to the employer address reported on Forms 1094-C.

Q3. Who will receive this letter?

A3. ALEs with at least one full-time employee (as defined by the ACA) that received a premium tax credit (PTC) for one or more months during 2015 may receive an IRS Letter 226J if they did not qualify for an affordability safe harbor or other type of relief for the employee. An ALE that has multiple FEINs may receive multiple letters.

Q4. What ACA payments are covered by the letter?

A4. Letter 226J pertains to employer shared responsibility penalties, as defined in the Internal Revenue Code (IRC) Section 4980H(a) and (b). An ALE may be liable for an employer shared responsibility payment (ESRP) for any month under either 4980H (a) or (b) if it:

- Did not offer MEC to at least 70% of its full-time employees (and their dependents) and at least one full-time employee was allowed the PTC (IRC Section 4980H(a)); or
- Did offer MEC to at least 70% of its full-time employees (and their dependents), and at least one fulltime employee was allowed the PTC (because the coverage was unaffordable or did not provide minimum value, or the full-time employee was not offered coverage) (IRC Section 4980H(b)).

Q5. What information will Letter 226J include?

A5.
- A brief explanation of section 4980H,
- An ESRP summary table itemizing the proposed payment by month and an explanation of the table,
- An employer response form, Form 14764, "ESRP Response,"
- An employee PTC list, Form 14765, "Employee Premium Tax Credit (PTC) List" which lists, by month, the ALE's assessable full-time employees,
- A description of the actions the ALE should take if it agrees or disagrees with the proposed ESRP in Letter 226J, and
- A description of the actions the IRS will take if the ALE does not respond timely to Letter 226J.

Q6. How long do employers have to respond?

A6. Employers must respond to Letter 226J by the response date listed on the first page of the letter, which is generally 30 days from the letter date.

Q7. What do employers need to provide to the IRS in their response?

A7.
- If you agree with the ESRP proposed amount, complete, sign, and date Form 14764, ESRP Response, and return it to the IRS by the response date. Payment can be included or made electronically if you are enrolled in the Electronic Federal Tax Payment System (EFTPS).
- If you disagree with all or a portion of the ESRP amount, include a completed ESRP Response, a signed statement explaining why you disagree with part or all of the proposed ESRP, your revised Employee PTC Listing, if necessary, and any additional documentation supporting your changes.

Q8. What happens after I respond?

A8. The IRS will reply with Letter 227 which will acknowledge the ALE's response to Letter 226J and describe further actions the ALE may need to take.

Q9. What happens if I don't respond to Letter 226J?

A9. IRS will send a Notice and Demand for the ESRP that was proposed and assessed. If unpaid, the IRS may initiate lien and/or levy enforcement, and amounts due may be subject to interest.