

ACA Employer Penalty Assessments Have Arrived

The Internal Revenue Service (IRS) has started sending out Letter 226J, which informs employers of liability under the Affordable Care Act (ACA) Employer Shared Responsibility Provisions. Please [click here](#) to learn what to do if you received the Penalty Assessment Process Letter 226J...

Employer Shared Responsibility Provisions

As referenced in a prior article, in 2015, ALE's were required to offer coverage to at least 70 % of their full-time employees and dependents, and the monthly cost to the employee for self-only coverage could not exceed 9.56% of the employee's income. ALE's with fewer than 100 full-time employees had transition relief.

Penalty Assessment Process-Letter 226J

- Gives an amount due by the employer, the proposed Employer Shared Responsibility Payment (ESRP).
- Gives the employer about 30 days to respond.
- Includes a Premium Tax Credit (PTC) list which will show individuals who for at least one month in the year were full time employees allowed a premium tax credit and for whom the ALE did not qualify for an affordability safe harbor or other relief. This list is very important.
- Gives instructions to follow as well as an individual to contact at the IRS. The ALE should read these instructions very carefully.

Action Items

- Direct all staff to look out for Letter 226J and to forward it to the appropriate person should they receive it.
- If you wish, forward to the attorney and/or accountant who represents your organization.
- Ask for an extension if necessary but be aware this might not buy you a lot of extra time.
- Gather the 1094 and 1095 forms you submitted. You should also gather the supporting documentation for why you filled the forms out the way you did and/or offered or did not offer an employee coverage.
- Review the PTC list, paying close attention to what employees they are assessing penalties for, and what months they are assessing penalties for. Compare this to what you reported. Do not just assume they are correct and pay the penalty without reviewing and ensuring all penalties are correct.
- You SHOULD correct the codes or any incorrect information on the PTC form using the codes for 2015. You should NOT do corrections through the corrections process for the 1095 forms themselves as you did previously if you noticed errors after the forms were submitted.
- Send out Form 14764 ESRP response within the deadline. Make sure to include a signed statement on why you disagree with part or all of the proposed ESRP. You should also include the revised PTC listing and any other documentation supporting your changes to the 1094 and 1095 codes.

- The IRS will then send out Letter 227J after they receive your response. There are five variations on what the letter will state but all will discuss further actions you must take so you need to be prepared to review that letter when it arrives. If you disagree with the Letter 227, you can request a “pre-assessment” conference with the IRS Office of Appeals within 30 days from the date of the Letter 227.
- The Notice and Demand for Payment will be sent if you do not pay the entire ESRP or if you do not respond in a timely manner. It is important to note that interest will accrue on the date of the notice and will continue until you pay in full.

The ESRP does not include the penalty for not filing or late filing the 1094 and 1095 forms. Those are separate penalties which are counted against the failure to deliver the form to the individual as well as the failure to file the form with the IRS.

The employer penalty assessments reinforce the fact that 1094 and 1095 forms need to contain accurate information. Additionally, they should be sent in even if you are an ALE but you did not offer coverage or failed to offer minimum value or affordable coverage. As an ALE you do not want to be subject to these separate penalties for not filing or late filing 1094 and 1095 forms as well as the employer penalty assessment.