

e-Alert: IRS issues pay or play enforcement guidance

On Nov. 2, 2017, the Internal Revenue Service (IRS) updated its [Questions and Answers](#) (Q&As) on the employer shared responsibility rules under the Affordable Care Act (ACA) to include information on enforcement. Specifically, these Q&As include guidance on:

- How an employer will know that it owes an employer shared responsibility penalty;
- Appealing a penalty assessment; and
- Procedures for paying any penalties owed.

The IRS also maintains a [website on understanding Letter 226-J](#), as well as a [sample letter](#), which will be used to inform employers of their potential penalty liability.

Background

The ACA's employer shared responsibility rules require applicable large employers (ALEs) to offer affordable, minimum value health coverage to their full-time employees or pay a penalty. These rules, also known as the "employer mandate" or "pay or play" rules, only apply to ALEs, which are employers with, on average, at least 50 full-time employees, including full-time equivalent employees, during the preceding calendar year.

The employer shared responsibility rules took effect for most ALEs beginning on **Jan. 1, 2015**. However, some ALEs may have had additional time to comply with these requirements. An ALE may be subject to a penalty only if one or more full-time employees obtain an Exchange subsidy (either because the ALE does not offer health coverage, or offers coverage that is unaffordable or does not provide minimum value).

Prior to 2017, the IRS has been unable to identify the employers potentially subject to an employer shared responsibility penalty or to assess any penalties. The IRS previously [indicated](#) that it expected to begin sending letters in early 2017 informing ALEs that filed Forms 1094-C and 1095-C of their potential liability for an employer shared responsibility penalty for the 2015 calendar year (with reporting in 2016).

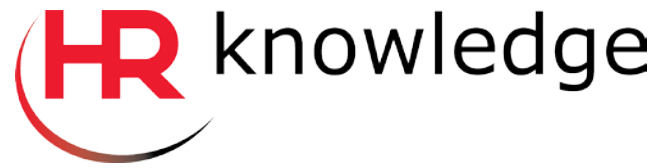
However, at this time, no letters have been sent to any ALEs.

IRS Guidance

The general procedures the IRS will use to propose and assess the employer shared responsibility penalties are described in [Letter 226-J](#). The response to Letter 226-J will be due by the response date shown on Letter 226-J, which generally will be **30 days from the date of Letter 226-J**. Letter 226-J will contain the name and contact information of a specific IRS employee that the ALE should contact if the ALE has questions about the letter.

If, after correspondence between the ALE and the IRS (or a conference with the IRS Office of Appeals), the IRS or IRS Office of Appeals determines that an ALE is liable for an employer shared responsibility penalty, the IRS will assess the employer shared responsibility penalty and issue a notice and demand for payment (Notice CP 220J). Notice CP 220J will:

- Include a summary of the employer shared responsibility penalty and reflect any payments made, credits applied and the balance due, if any
- Instruct the ALE how to make a payment, if any.



Action Steps

No penalties have been assessed under the employer shared responsibility rules at this time. However, employers subject to these rules are still responsible for compliance. These Q&As indicate that, **for the 2015 calendar year, the IRS plans to issue letters informing employers of their potential liability for an employer shared responsibility penalty, if any, in late 2017.**

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