



## SPECIAL ADDITION END OF SUMMER '19

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## IRS SENDING ACA PENALTY LETTERS AT STAGGERING PACE

The HRWS Advisory and Compliance teams have been inundated with calls and emails from clients regarding ACA penalty letters coming from the IRS, representing thousands upon thousands of dollars. And rather than slowing down, the pace of outgoing penalty letters is set to increase substantially.

In fact, with renewed focus, upgraded technology and agent support, the IRS has significantly ramped up efforts to assess penalties for non-compliance with the ACA employer mandate (also known as Employer Shared Responsibility Payment, or ESRP).

- ▶ IRS data shows about **1 in 6** Applicable Large Employers are **currently at risk** for compliance action.
- ▶ **300,000+** ALE's identified by the IRS in the 2015 tax year reporting
- ▶ **30,000+ ESRP Letter 226Js** sent out to ALEs for 2015.
- ▶ **\$4.5B in "ESRP" penalties** for 2015, alone.
- ▶ **\$228B+** ESRP penalties expected by 2026.
- ▶ **\$2.5+ million** IRS investment dollars put toward **enforcement** efforts.
- ▶ **Reports digitally cross-referenced by IRS** to identify compliance issues (W2s, 5500s, 1040s and others).
- ▶ **June 2019**, the IRS began sending Letters 226J for proposed 2017 ESRP penalties.
- ▶ IRS **increasing efforts** to identify potential **non-filers via Letter 5699**.

*Statistical data provided by Treasury Inspector General's Tax Administration (TIGTA).*

## RAMIFICATIONS OF IRS INVOLVEMENT

### The Two Types of Letter 226J Penalties

**1. 4980(h)(a) Penalty: \$2,500 (2019)**

Annualized Penalty Per Full-time Employee (less the first 30 FT EE's). Employer fails to offer minimum essential coverage to at least 95% of it's full-time employees (and dependents) for a given month of the calendar year.

**2. 4980(h)(b) Penalty \$3,750 (2019)**

Annualized Penalty Per Full-time Employee. Employer fails to offer coverage to one or more full-time employees or full-time employee receives offer of coverage that was either not affordable or did not provide minimum value AND one or more full-time employees receives a premium tax credit for that month



Employers subject to filing 1095 forms with the IRS can face penalties for not furnishing forms to employees or failing to file with the IRS in a timely manner.

**1. Failure to File - 6721 Penalty**  
\$270/per form

Penalty is reduced to \$50/per form, if filed within 30 days of original due date. If filed within 31 days to August 1st, penalty is reduced to \$100/per form.

**2. Failure to Furnish - 6722 Penalty**  
\$270/per Form

Penalty is reduced to \$50/per form, if furnished within 30 days of original due date. If furnished within 31 days to August 1st, penalty is reduced to \$100/per form.



## 6 STEPS TO TAKE

### IF YOUR ORGANIZATION RECEIVES A PENALTY LETTER



As the IRS escalates enforcement efforts, more employers will receive an ESRP Penalty Letter. Here's what to do if you receive one:

#### Before You Act

**Step 1:** Understand that you (employer) only have 30 days to respond (from date letter was sent).

**Step 2:** A single, 30-day extension may be requested.

#### Taking Formal Action

**Step 3:** Carefully review all Letter 226j details in order to fully understand what the IRS is claiming.

**Step 4:** Verify that the information reported was accurate for each employee listed in the letter's Premium Tax Credit (PTC) table. If it is not, make necessary changes as described in letter's instructions.

**Step 5:** Verify that compliant offers of coverage were offered to the employees listed in the PTC table and begin collecting the necessary supporting documentation.

**Step 6:** Complete Form 14764 and attach any documentation/statements countering the IRS claims (if organization disagrees with proposed penalty)

#### DO NOT Ignore a Letter

Failing to respond in the 30-day window will assuredly make matters worse. Parties failing to respond within this time frame may concede their right to counter the proposed penalty or even negotiate. If the IRS does not receive your response within the allotted time frame they will issue *Notice CP220J Demand for Payment* before entering into any resolution discussions.

#### Speak to an Expert

These matters are challenging and can be downright scary, particularly if you do not have expert advice at your disposal. If you have received a letter or would like assistance implementing a policy to ensure ACA compliance, we strongly recommend contacting your HRWS Advisory Team.



## GLOSSARY OF IMPORTANT ACA TERMS

### **Applicable Large Employer (ALE):**

Any company that averages at least 50 or more full-time employees, including full-time equivalents. ALE's are subject to the employer shared responsibility provisions under ACA and must report to the IRS offers of coverage made to its full-time employees during the tax year.

### **Premium Tax Credit:**

A refundable tax credit that can be claimed by certain eligible individuals (income between 100% and 400% of the federal poverty line) to assist with covering premiums for health insurance purchased through the marketplace exchange.

### **Full-Time Employees :**

For purposes of the employer shared responsibility provisions, a full-time employee is, for a calendar month, an employee employed on average at least 30 hours of service per week, or 130 hours of service per month.

### **Affordability:**

An employer-sponsored plan is affordable if it satisfies one of three available safe harbors: W-2, rate of Pay, and Federal Poverty Line. For more information on these safe harbors see our quick reference guide in your myHRWS portal resources.

### **Minimum Essential Coverage (MEC):**

This is the type of coverage an individual needs to have in order to meet the individual responsibility requirement under the ACA, including health insurance coverage in individual market, employee-sponsored plans and government-sponsored coverage.

### **Minimum Value:**

An employer-sponsored plan provides minimum value if it covers at least 60 percent of the total allowed cost of benefits that are expected to be incurred under the plan. Employers that do not offer Minimum Value may be subject to a penalty under IRC 4980(h)(b).

### **Forms 1094-C / 1095-C:**

**1094-C:** The transmittal form to be filed with the Form 1095-C

**1095-C:** Form 1095-C is filed and furnished to any employee of an Applicable Large Employers (ALE) member who is a full-time employee for one or more months of the calendar. ALE members must report that information for all twelve months of the calendar year for each employee.

*Be advised that the information contained in Trending is for educational purposes only and a general understanding of the law, not to provide specific legal advice.*