

Health Care Reform Management Alert Series



Ready or Not, Here Come ACA Employer Mandate Penalty Notices

Issue 115

By Jennifer A. Kraft and Joy Sellstrom

This is the one hundred and fifteenth issue in our series of alerts for employers on selected topics on health care reform. (Click [here](#) to access our general Summary of Health Care Reform and other issues in this series.) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

The notices are coming. As described in Issues [45](#) and [48](#), the Affordable Care Act requires large employers to pay a penalty if they fail to offer qualifying health coverage. These rules were delayed until 2015, but, the IRS had not yet assessed any penalties.

The IRS has now announced through FAQs on its [website](#) that it will begin issuing notices to employers of their potential liability for an employer shared responsibility payment under the ACA “in late 2017.” As promised in earlier regulatory guidance, the IRS will provide an opportunity for employers to respond and challenge proposed employer shared responsibility payments (ESRP) before the penalties are actually assessed.

Here’s how the process will work:

- The IRS will send the employer a Letter 226-J. (The IRS has released a sample of this letter which can be found [here](#).) Letter 226J will include:
 - A summary table itemizing the proposed payment by month;
 - An Employee Premium Tax Credit (PTC) Listing (Form 14765) listing employees who received a premium tax credit for the year in question; and
 - A form (Form 14764) on which the employer can provide a response to the proposed assessment.
- The employer will generally have 30 days from the date of the IRS notice to respond to the IRS. If the employer disagrees with the proposed ESRP, the employer must submit a completed Form 14764, with a statement explaining why the employer disagrees with the assessment and supporting documentation. The statement should describe any changes requested to the information previously reported on Forms 1094-C or 1095-C. If corrections are necessary to the Employee PTC Listing, a revised Employee PTC Listing should be included with Form 14764.
- The IRS will respond to an employer’s submission of Form 14764 with a version of Letter 227 which will describe further actions the employer may need to take.

- If the employer, is not satisfied with the response, the employer may request a pre-assessment conference with the IRS Office of Appeals, by the response date shown on Letter 227, which generally will be 30 days from the date of Letter 227.

Employer Action Steps

- Be on the look-out for IRS notices as employers only have 30 days to respond.
- Have 1095-C reporting records handy to check the accuracy of any proposed penalties and be ready to respond.
- If you do receive an IRS notice, review and confirm the data (e.g., was this actually an employee of the employer, was it a full-time employee, was the individual offered coverage, etc.).
- Then consider your options in responding to the assessment.

[Jennifer Kraft](#) is a partner and [Joy Sellstrom](#) is a senior counsel, both residing in the firm's Chicago office. If you have any questions, please contact Jennifer Kraft at jkraft@seyfarth.com or Joy Sellstrom at jsellstrom@seyfarth.com.

www.seyfarth.com



Attorney Advertising. This Health Care Reform Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

Seyfarth Shaw LLP Health Care Reform Alert | November 13, 2017

©2017 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.