

Labor and Employment Alert: IRS Prepares to Enforce Employer Pay or Play Penalties

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On November 2, 2017, the IRS updated [FAQs 55-58](#) on the ACA employer pay or play penalties to explain how it intends to assess and collect 2015 penalties under Code Section 4980H. The IRS expects to send notices in “late 2017.” If you receive a notice, you have 30 days to respond.

If the IRS thinks your company may owe a pay or play penalty for 2015, the IRS will send Letter 226J to the company address listed in the 2015 Form 1094-C. Along with Letter 226J, you will receive a list, on Form 14765 (the Employee Premium Tax Credit List), of the employees who triggered the penalty. Form 14765 will list each full-time employee:

- Who received 2015 premium assistance for the purchase of individual coverage in an exchange for a month; and
- For whom you filed a 2015 Form 1095-C with Line 16 blank for that month. A blank Line 16 on Form 1095-C indicates to the IRS that you did not offer the employee affordable coverage for that month and that no other safe harbor code applied. Of course, given the difficulties with Form 1095-C programming, especially for 2015, a blank Line 16 could be an error.

You have 30 days from the date on Letter 226J to respond on Employer Shared Responsibility Response Form 14764. You may respond indicating that you (a) agree with the proposed assessment; or (b) disagree with part or all of the proposed assessment.

The IRS will acknowledge your response with one of five versions of Letter 227. Letter 227 will have further instructions as to steps you can take to dispute the assessment.

If you fail to respond to either Letter 226J or Letter 227 within the deadlines or if after correspondence the IRS finds you owe a penalty, the IRS will send Notice CP 220J (a notice and demand for payment).

As of the writing of this client alert on November 6, 2017, the IRS has not published the letters, forms or notice. When those items are published, we will add links to the documents below.

- [Letter 226J](#)
- [Form 14764](#)
- [Form 14765](#)

Other Employee Benefit News

Cost of Living Adjustments

A chart with 2018 group health plan indexed amounts is [available here](#).

Proposed delay of the new claims and appeals process for disability benefits

On December 19, 2016, the Department of Labor (DOL) under the prior administration published final regulations on claims and appeals for disability benefits. The regulations would have imposed more complex claims and appeals procedures on any employee benefit plan where benefits were contingent on a finding of disability (except where the finding of disability is based on an independent entity like the Social Security Administration). The regulations were supposed to be effective for disability claims filed on or after January 1, 2018.

On October 12, 2017, the DOL proposed a 90 day delay (to April 1, 2018) of the regulations. Assuming the DOL goes forward with the proposed delay (as seems likely), the DOL will then “consider whether it supports regulatory alternatives other than those adopted in the Final Rule” (as also seems likely given the tenor of the proposed 90-day delay). We will keep you posted on further developments.