

HEALTH CARE REFORM: EMPLOYER MANDATE PENALTY NOTICES COMING SOON

Under the Affordable Care Act (ACA), an Applicable Large Employer (ALE) may be subject to a penalty if it fails to offer its ACA defined full-time (FT) employees and their dependents minimum essential coverage (MEC) that is affordable and provides minimum value (MV). There are two Employer Mandate penalties:

1. “A” Penalty – ALE fails to offer MEC to at least 95% (70% for 2015) of its ACA defined FT employees and their dependents.
2. “B” Penalty – ALE offers MEC to 95% (70% for 2015) of its ACA defined FT employees and their dependents but does not offer it to all of its ACA defined FT employees and their dependents or it is unaffordable or does not provide MV.

Although the Employer Mandate went into effect on January 1, 2015, the Internal Revenue Service (IRS) has not sent out penalty notices to ALEs. New “Frequently Asked Questions” on the IRS website indicate they will start issuing notices in “late 2017” that will inform ALEs about potential liability for the 2015 calendar year.

THE NOTICE

The IRS will send Letter 226J if it determines that, for at least one month in the year, one or more of the ALE’s FT employees was enrolled in Exchange coverage, the employee claimed a premium tax credit and the ALE did not qualify for an affordability safe harbor or other relief. The determination is based on information reported to the IRS on Forms 1094-C and 1095-C plus information reported by the Exchanges.

Letter 226J will include a summary table itemizing the proposed penalty month by month, including whether liability is for the “A” or “B” penalty. It will also include a list of employees on Form 14765 that indicates, by calendar month, each ACA defined FT employee who claimed a premium tax credit and the indicator codes, if any, the ALE reported on lines 14 and 16 of the employee’s Form 1095-C. The ALE will be given the name and contact information for a specific IRS employee who will be available to answer questions about the letter.

RESPONDING TO THE NOTICE

The IRS will explain in the letter what actions the ALE should take if it agrees or disagrees with the proposed penalty and will provide Form 14764 for the ALE to respond. The ALE’s response will be due by the response date shown on Letter 226J, which will generally be 30 days from the date of letter. The IRS will acknowledge receipt of the ALE’s response by sending a Letter 227 that will describe further actions the ALE may need to take.

If, after receipt of Letter 227, the ALE disagrees with the proposed or revised penalty, the ALE may request a pre-assessment conference with the IRS Office of Appeals. Instructions for filing an appeal will be provided in Letter 227. If the ALE does not respond to either Letter 226J or Letter 227, the IRS will assess the penalty and issue a notice and demand for payment. The notice will instruct the ALE how to make payment.

NEXT STEPS

Employers subject to the Employer Mandate need to be prepared to receive and respond, if necessary, to Letter 226J and they need to be ready to respond quickly to meet the 30-day deadline. If you have not already done so, identify who in your organization will be responsible for receiving and responding to these notices. Tell your mailroom to keep an eye out for these notices so they can make sure they get to the right person in a timely manner. Also, make sure your records for 2015 are readily accessible, including information about eligibility, offers of coverage, and affordability. Employers using third-party vendors for tracking and reporting should work with their vendor to ensure timely access to the data.

Please contact your Keenan HealthCare Account Manager for questions regarding this *Briefing* or if you require any additional information.

Keenan & Associates is not a law firm and no opinion, suggestion, or recommendation of the firm or its employees shall constitute legal advice. Clients are advised to consult with their own attorney for a determination of their legal rights, responsibilities and liabilities, including the interpretation of any statute or regulation, or its application to the clients' business activities.