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ACA Penalties 2018



On November 2, 2017 the Internal Revenue Service (IRS) issued **revised FAQs on the employer shared responsibility provisions** under the Affordable Care Act (ACA). Question sets 55-58 now detail the procedure the IRS will use to begin issuing proposed penalty assessments to employers that failed to comply with these provisions in 2015. Though the IRS was previously silent on the details of penalty assessments, this new information serves as a reminder to employers that compliance enforcement is a priority for the IRS.

Employer Shared Responsibility Provisions

Under the ACA's employer shared responsibility provisions, Applicable Large Employers (ALEs) are required to offer health coverage to full-time employees and their dependents that both provides minimum value and is affordable. Penalties may be assessed against an employer that either fails to offer health coverage to enough of its full-time employees and dependents, or offers coverage that fails to provide minimum value and/or meet affordability standards.

In 2015, ALEs were required to offer coverage to at least 70% of its full-time employees and dependents, and the monthly cost to the employee for self-only coverage could not exceed 9.56% of the employee's income. ALEs with fewer than 100 full-time employees had transition relief available.

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Penalty Assessment Process

The IRS will use [Letter 226J](#) to notify employers that it determines, for at least one month of the year, had a full-time employee enrolled in a health plan for which a premium tax credit was allowed. The Letter will include an estimated monthly penalty amount along with a list of full-time employees for whom the penalty applies. Information provided by the employer on 2015 ACA reporting Forms 1094- and 1095-C will be used by the IRS to make these determinations. **The IRS intends to issue Letters 226J for the 2015 year in late 2017.**

An employer that receives a Letter 226J will have an opportunity to respond to the IRS in writing to either agree with or dispute the IRS's proposed assessment. In the event a penalty is ultimately assessed, the employer will receive Notice CP220J and will need to make its payment pursuant to the instructions included therein.

Action Items

While it's too late for employers to enact compliance strategies that could prevent a 2015 penalty assessment, there are several important considerations for employers going forward:

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- If a Letter 226J is received, employers have 30 days to respond to the IRS, in writing, that the employer either agrees with the assessment or disagrees, in whole or in part. Failure to timely respond will result in an automatic assessment of the IRS's proposed penalty amount.
- Employers should designate a contact person within the organization to handle responses to the IRS should a Letter be received.
- Accurate record-keeping will be essential, both for past and future years.
- The IRS now has a process through which to administer penalties. Thus, employers should take seriously their ongoing obligations under the ACA, including 2017 ACA reporting.



In an effort to make health coverage more affordable and accessible, the Affordable Care Act (ACA) implemented parameters to the premium rating methodologies used by insurers in the individual and small group markets. Insurers in these markets can vary premium based on age so long as the insurers adhere to the proper age band rating procedure.

This procedure has remained unchanged since 2014, but pursuant to a rule issued by the Department of Health and Human Services (HHS), the rating methodology will change come 2018.

Change to Rating Methodology

ACA Age Band Rating 2018

Changes to the age band rating methodology will begin to take effect in 2018. Presently, the methodology requires that insurers assign a single banded premium rate for all individuals ages 0-20, with single ratings applied to each year of age from 21 upward (to age 63). Under the new methodology effective in 2018, insurers can apply a single banded premium rate for all individuals ages 0-14 and begin to assign a single rate to each year of age as early as age 15. As a result, insureds will begin to see a premium increase upon turning age 15 rather than age 21.

Impact on Employers

Employers in the small group insurance market will be affected by this rating change. In most states, a small group employer is one with 50 or fewer employees. However, California defines a small group employer as one with up to 100 full-time and full-time equivalent employees. . Thus, a wider swath of employers in California will be impacted than in other states.

The new rating methodology will likely bring a premium increase for 2018 renewals for most small group employers. While employers can do little to change their classification as a small group employer and, consequently, the age band ratings that apply, there may be other plan design strategies that could counteract the rising premium costs. Employers should carefully review premium increases expected in 2018 and explore cost-control measures in other areas of their plan.