



Brace for Impact: IRS Says ACA Employer Mandate Penalties Coming

Insights

11.28.17

The IRS quietly revised its [FAQ](#) on employer shared responsibility provisions under the Affordable Care Act (ACA) in November, adding a bombshell statement that it plans to inform employers of their “potential liability for an employer shared responsibility payment, if any, in late 2017.” The announcement should put employers on high alert at the close of the year.

Background: Employers Were Hoping To Escape Enforcement

Under the ACA, large employers are required to provide their full-time employees with healthcare insurance that is affordable and meets minimum value. However, penalties for failure to offer such coverage have not yet been assessed. Some speculated that, given the political uncertainty surrounding healthcare reform, the government would either continue to delay enforcement or skip enforcement for 2015 altogether. With its recent statement, the IRS clarifies that penalties for failure to provide coverage will be pursued.

What Does This Announcement Mean For Employers?

The FAQ explains the manner in which the government will propose and assess penalties. Letter 226J will be issued to a large employer if the IRS determines that, for at least one month in the year, one or more of the employer’s full-time employees were enrolled in a qualified health plan for which a Health Insurance Marketplace subsidy was issued, and the employer did not qualify for an affordability safe harbor or other relief.

Letter 226J will include: (1) a penalty explanation; (2) a summary table itemizing the proposed payment per month; (3) a response form (Form 14764); (4) an Employee Premium Tax Credit (PTC) Listing (Form 14765), which lists by month the employer’s full-time employees who received a Marketplace subsidy and were not offered employer coverage that met an affordability safe harbor; (5) a description of the actions the employer should take depending on whether it agrees or disagrees with the proposed payment; and (6) a description of the actions the IRS will take if the employer does not respond in a timely manner.

A response deadline will appear on the Letter 226J, generally 30 days from the date of the letter. After an employer responds, the IRS will send its response (Letter 227). If, after such response, the employer still disagrees with the proposed penalty payment, it may request a pre-assessment conference with the IRS Office of Appeals. If an employer fails to respond to either Letter 226J or

Letter 227, the IRS will assess the amount of the proposed penalty, then issue a notice and demand for payment (Notice CP 220J).

What Should Employers Do Now?

Since the opening of the Marketplace in 2014, many employees have misunderstood their eligibility for subsidies, and now even employers that believe they complied with the employer mandate may receive a proposed penalty assessment. With only one month left in the year, all large employers should be on the lookout for Letter 226J and begin to implement the processes necessary for a timely response.

For more information, contact the author at TGeorge@fisherphillips.com or 504.529.3845.

Service Focus

Employee Benefits and Tax