

# eBenefits Alert: IRS Has Begun Calculation of Employer Mandate Penalties

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Large employers have made it through two years of filing Forms 1094-C and 1095-C to report offers of health insurance to full-time employees. Now, the IRS has started issuing preliminary penalty calculations for the 2015 calendar year. The IRS will notify employers of its calculation of mandated penalties in a "Letter 226J," which will include a proposed penalty, a month-by-month summary of the penalty, and a list of employees who received premium tax credits on the exchange. Employers who receive Letter 226J will have 30 days to respond. Given the complexity of the reporting and how long it has taken the IRS to issue Letters 226J, it's not too early to make sure you're ready.

## *A Little Background*

The Affordable Care Act requires "applicable large employers" ("ALEs") to offer "minimum essential coverage" that is "affordable" to their "full-time" employees. An ALE is an employer with at least 50 full-time employees. There are two types of penalty—one for a failure to offer coverage (the 4980H(a) penalty), and one for coverage that is unaffordable (the 4980H(b) penalty). The IRS will assess no more than one of these two penalties in any month.

The penalty is triggered only if you had at least one employee who bought coverage on the exchange ("Marketplace" or, in Minnesota, MNSure) and received a premium tax credit.

You should have received notice from the exchange if this happened. You may have appealed the exchange's decision to grant a credit, but in some cases—for example, if the employee was not full-time—you did not appeal. The exchange notice was not a penalty assessment—just an opportunity for you and the exchange to confirm the employee's eligibility for a premium tax credit.

The IRS Letter 226J is the precursor to a penalty assessment, and something you need to be prepared to appeal. If you expect to owe a penalty, be prepared to verify that the IRS has calculated it correctly. If you do not expect to owe a penalty, be prepared to explain why. You will have a chance to respond to the IRS and explain your reasoning before the penalty is actually assessed. The IRS will include a Form 14764 for your response. You can call an IRS agent for more information, and you will also be able to authorize a representative to talk to the IRS on your behalf.



Remember that the rules were a little different in 2015, the year for which the IRS is now issuing Letter 226J. There was full relief from penalties in 2015 for employers who had between 50 and 99 employees and met certain conditions. For employers with 100 or more employees, there was a reduction in penalties that could be assessed for a failure to offer coverage.

#### *What to Do Next*

Know where your Forms 1094-C and 1095-C for 2015 are located. You'll need to have them handy to review Letter 226J.

Make sure that a Letter 226J, if it comes, routes to the right person in your organization as quickly as possible. That person will need to devote full attention to Letter 226J, and will have only 30 days to respond.

Take some time to re-familiarize yourself with the decisions your organization made about providing and reporting offers of coverage in 2015. A good faith standard applied to 2015 reporting, so your notes may be helpful with addressing any reporting issues.

The IRS issued some FAQs on penalty payments: <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act#Making>.

Call your Gray Plant Mooty benefits attorney if you have questions or need help with responding to a Letter 226J.