

WHAT YOU NEED TO KNOW



Understanding Your IRS Play-or-Pay Penalty Assessment Letter

Recently, you may have received a letter from the Internal Revenue Service (IRS) stating that you may owe money because you either didn't offer health coverage to enough of your full-time employees, or the health coverage that you offered wasn't affordable or minimum value.

Here are answers to common questions that you may have.

What is this Letter 226-J?

[Letter 226J](#) is a proposed penalty assessment letter that the IRS started sending to large employers in late 2017.

Why did I get a Letter 226-J?

If your company was a large employer that was required to offer health coverage to your full-time employees in calendar year 2016, then the IRS has reviewed your Form 1094/1095-C filings for that year and determined that your company may owe money based on the information that you provided in the forms.

The letter will explain why the IRS proposes that you owe a penalty. Generally, for 2016, as a large employer, you may owe a penalty under the employer shared responsibility provisions (ESRP) of the Patient Protection and Affordable Care Act (ACA) if you either:

1. didn't offer minimum essential coverage (MEC) to at least 95 percent of your full-time employees (and their dependents) and at least one of your full-time employees received a premium tax credit (or subsidy) on the Marketplace exchange; or
2. offered MEC to at least 95 percent of your full-time employees (and their dependents), but at least one of your full-time employees received a subsidy on the Marketplace exchange because the coverage was either unaffordable or didn't provide minimum value.

What should I do first?

You should contact your attorney so you can file your response with the IRS by the deadline in the letter. Generally, you'll find the deadline on the first page of the letter. It's the firm date listed next to "Response date." The letter will also contain Form 14764 (ESRP Response) which is the form that you'll use to file your response with the IRS.

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You must use [Form 14764](#) to respond to the Letter 226-J, to indicate that you agree or disagree with the letter. If you disagree with the proposed liability, then you must provide a full explanation of your disagreement using [Form 14765](#).

What should I do after I contact my attorney?

You should contact the people (for example, CPA or vendor) that prepared your Form 1094/1095-C filings for calendar year 2016. You should ask them to provide you with a copy of your filings for that year. If there are specific questions about coding on the past forms, then you should ask them to explain why they used certain codes.

What should I do to prepare my response to the IRS?

Unless your attorney advises differently, you should locate the relevant written offers of coverage and signed waivers of coverage. The signed waiver of coverage is especially useful if it shows that the coverage provided minimum value and was offered at a cost that was affordable to the employee using an affordability safe harbor.

You should also locate your plan document and summary plan description that describe the measurement method that you used. If you used a look back measurement method, then you should locate the document that details the dates and time periods used.

What shouldn't I do?

Unless instructed by your attorney otherwise, do not make payment at the initial stage of receiving this first letter from the IRS. Letter 226-J is a proposed penalty assessment letter, not a notice and demand for payment.

Do not ignore the response deadline. If you do not respond to Letter 226-J (or IRS' Letter 227, which is the IRS' response to an employer's response to Letter 226-J), then the IRS will assess the payment amount against you by sending [Notice CP220J](#) to you. Notice CP220J is the IRS' payment demand that provides an employer with payment instructions.

Do not take any adverse employment action against the employees who received a subsidy. The ACA prohibits employers from retaliating against employees who received a subsidy. To avoid retaliation allegations, do not have your human resources department (or employees who have authority to make employment actions) handle Letter 226-J correspondence.

What is Letter 227?

After you file Form 14764 or Form 14765, or both, the IRS responds by sending a Letter 227 acknowledgment letter to either close your case or explain the next steps in the process. Per the IRS' [Understanding Your Letter 227](#), the IRS will issue one of five different 227 letters:

- [Letter 227-J](#) acknowledges receipt of the signed agreement Form 14764, ESRP Response, and that the penalty will be assessed. After the IRS issues this letter, the case will be closed. No response is required.
- [Letter 227-K](#) acknowledges receipt of the information provided and shows the penalty has been reduced to zero. After the IRS issues this letter, the case will be closed. No response is required.

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- [Letter 227-L](#) acknowledges receipt of the information provided and shows the penalty has been revised. The letter includes an updated Form 14765 and revised calculation table. The employer can agree or request a meeting with the manager and/or appeals.
- [Letter 227-M](#) acknowledges receipt of information provided and shows that the penalty did not change. The letter provides an updated Form 14765 and revised calculation table. The employer can agree or request a meeting with the manager and/or appeals.
- [Letter 227-N](#) acknowledges the decision reached in appeals and shows the penalty based on the appeals review. After the IRS issues this letter, the case will be closed. No response is required.

What should I do if I receive a Letter 227?

You should read Letter 227 and its attachments carefully. These documents explain the next steps available and provide information on how the case will be resolved. If appropriate, complete the response Form 14764 indicating your agreement or disagreement.

If you disagree with the proposed penalty, you must provide an explanation of why you disagree or indicate changes needed, or both, on Form 14765. Return all documents as instructed in the letter by the response date.

If you agree with the proposed penalty, follow the instructions to sign the response form and return it with full payment in the envelope provided.

Conclusion

If you receive a letter from the IRS regarding proposed play-or-pay penalties, then you should consult with your attorney as soon as possible. It's critical that you file your reply to the IRS by completing Form 14764 within the IRS' deadline.

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