

IRS UPDATES GUIDANCE REGARDING ACA ENFORCEMENT

Hodgson Russ Employee Benefits Newsletter
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Practices & Industries

Employee Benefits

The IRS recently provided new guidance concerning its process for notifying and assessing penalties under the Employer Shared Responsibility provisions of the Affordable Care Act. The IRS's website (accessible here: <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act#Making>) describes the timing and form of the anticipated enforcement effort.

Background. Under the Employer Shared Responsibility provisions of the Affordable Care Act employers with at least 50 full-time employees could face a penalty if they do not offer affordable coverage to their full-time employees.

Timing. The IRS guidance states that the IRS plans to issue letters to applicable large employers concerning their potential liability relating to the 2015 calendar year "in late 2017."

Form. The IRS plans to issue a letter (Letter 226J <https://www.irs.gov/pub/notices/ltr226j.pdf>) to employers, if the IRS determines that, for at least one month in the year, one or more of the employer's full-time employees was not offered affordable coverage under the employer's plan and, instead, the employee received a premium tax credit for coverage through a Healthcare exchange. **Employers will generally need to respond within 30 days from the date on the letter.**

If an employer receives one of these letters, the employer will be given an opportunity to respond before a penalty is assessed. Because the response period is short (and the end of the year is busy), we recommend some advance preparation, such as gathering the necessary information and identifying the person (or people) who will be responsible for preparing the response.