

COMMUNITY COLLEGE UPDATE

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Be Prepared for Another Round of Affordable Care Act Employer Penalties

Despite the relief for individual tax payers from penalties associated with the Affordable Care Act (ACA), employers must still abide by the Employer Shared Responsibility Provisions of the ACA. In the previous article “[ACA Penalties are Affecting Educational Agencies](#)” in the April 6, 2018, *Community College Update*, we discussed the provisions that require applicable large employers (ALEs) to either offer affordable health care that provides minimum value, or make an employer shared responsibility payment (ESRP) to the Internal Revenue Service (IRS). ALEs are employers with more than 50 full-time equivalent employees.

On November 2, 2017, the IRS issued [Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act](#), which informed employers that the agency began notifying ALEs of potential penalties based on employers’ filings for the 2015 year via Forms 1094-C and 1095-C, and employees’ individual tax returns.

According to the Society for Human Resource Management, over 300,000 employers received a proposed penalty Letter [226-J](#) for the 2015 calendar year. Some penalties were reported to be over \$1,000,000. More Letters 226-J with proposed penalties for the 2016 calendar year are expected to be issued in late 2018 or early 2019.

In a sample [Letter 226-J](#) (updated January 2018), the IRS details the calculation methodology for assessing the penalties. Before agreeing to a penalty it is important that employers carefully review the proposed penalty and information—once an employer accepts the penalty and the IRS takes steps to assess it, the options to make corrections or appeal are very limited. The Letter 226-J is an employer’s opportunity to ensure the information is accurate and was correctly reported to the IRS. Employers should begin evaluating the proposed penalty by:

- Reviewing the IRS calculations
- Checking the employer’s records to ensure what is on file matches what is provided by the IRS
- Consulting with your benefits attorney to determine how to proceed if an error was found, or to determine if any other recourse can be pursued
- Filing the agreement or disagreement via Form 14764 ESRP Response, depending on the results of your analysis

Form 14764 is provided from the IRS with the Letter 226-J and must be submitted within 30 days of the date of the Letter 226-J. The Form 14764 requires either an agreement or disagreement to the calculation and penalty. If the employer disagrees with the proposed ESRP, the IRS will respond with Letter 227. If the employer disagrees with the conclusion from the IRS, it can request a pre-assessment conference with the IRS Office of Appeals, which will generally take place 30 days from the date of the Letter 227.

There is no relief on the immediate horizon for employers. On July 12, 2018, the House Ways and Means Committee approved legislation ([H.R. 4616](#)) to temporarily repeal the employer mandate for 2015-2019 as well as delay the “Cadillac Tax” to 2022. To date, there has been no further advancement of this bill.