

The Internal Revenue Service (IRS) has recently decided they will begin to strictly enforce the Affordable Care Act (ACA) Employer Shared Responsibility Mandate for the first time since the law's inception.

The IRS confirmed that they will start enforcing penalties to companies with 50 employees or more that fail to meet the requirements of the Employer Shared Responsibility provisions contained within the ACA. This means companies could see penalties going back to 2015.

The IRS was supposed to begin enforcing the mandate in 2014, but has been somewhat lenient due to staffing and funding issues.

General Background:

Beginning in 2014, employers who average 50 or more full time employees (and equivalents) are required to provide health care coverage to all employees who are:

1. Designated Full Time Employees - Positions that are reasonably expected to work 30 or more hours per week.
2. Variable Hour Employees (working 30 or more hours) – These are employees who were not benefit eligible due to the type of position they were hired into and where you have measured their hours through an established measurement period and determined that the employee has averaged 30 or more hours.

The health care plan must meet the standard coverage guidelines of the ACA as well as be considered affordable for employee only coverage.

1. Penalty "A": The employer must offer minimum essential coverage to at least 95 percent (70% for 2015) of its full-time employees and their dependent children. The penalty for failing to meet this standard is equal to the number of full-time employees the employer employed for each month, minus 30 (80 for 2015 only), multiplied by one-twelfth of \$2,000.
2. Penalty "B": The employer must also over coverage that is affordable and provides minimum value. The penalty for failing to meet this standard is equal to the number of full-time employees who receive an exchange subsidy for that month, multiplied by 1/12 of \$3,000.

Note the per employee penalty amount will increase each year:

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Affordability Percentage	9.50%	9.56%	9.66%	9.69%	9.56%
Penalty "A"	\$ 2,000	\$ 2,080	\$ 2,160	\$ 2,260	\$ 2,320
Penalty "B"	\$ 3,000	\$ 3,120	\$ 3,240	\$ 3,390	\$ 3,480

Also note that penalties for non-compliance with the Employer Shared Responsibility provisions are generally waived until the 2016 plan year for employers with at least 50 but fewer than 100 full-time equivalent employees.

Despite the complexity and struggles in implementing Employer Shared Responsibility provisions, the IRS now seems poised to begin assessments of the first-ever penalties. Based on the updated IRS Q&A guidance issued this week, the preliminary letters advising Applicable Large Employers of potential liability may be issued before the end of 2017. You should be on the lookout for them and be prepared to promptly review the letters, make note of any deadline for responding, and have the appropriate documentation on hand to challenge any assessment that appears erroneous.

More information, and a sample IRS penalty notice letter(Letter 226J), can be found on the [IRS's Understanding your Letter 226-J webpage](#).