



Health Care Reform Update



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update #76 November, 2017

IRS Releases Forms 14764 and 14765 Related to 2015 Employer Shared Responsibility Penalties

The IRS has released Forms 14764 and 14765 to assess the first-ever Code § 4980H employer shared responsibility penalties against applicable large employers (ALEs). The IRS recently updated Q&A guidance on employer shared responsibilities to explain the procedure it will use for the 2015 calendar year (See BLA's Health Care Reform Update #75), including the issuance of a Letter 226J, which is the initial IRS notification of a proposed penalty amount.

Form 14764:

This is the response form that the employer completes to indicate its agreement or disagreement with the penalty amount proposed by the IRS. If the employer agrees with the proposed amount, it signs and returns the form in the envelope provided. Payment may be made by check or use of the electronic federal tax payment system (EFTPS). If the employer disagrees with the proposed penalty liability, it must provide a full explanation of the disagreement and indicate changes, on Form 14765.

Form 14765:

This form lists the employer's penalty assessable full-time employees. These are employees who, for at least one month in the year, were full-time employees, purchased coverage on the health care exchange, were allowed a premium tax credit for the exchange coverage and for whom the employer did not qualify for an affordability safe harbor or other relief. This form will also include the indicator codes the employer reported to the IRS on lines 14 and 16 Form 1095-C. Any month not highlighted on the form is a month where the employee is an assessable full-time employee and the employer is subject to a penalty for that employee for that month. The employer may make changes to Form 14765 (example: corrections to the indicator codes for an employee), if needed, and include this form along with its response on Form 14764, to indicate its disagreement with the proposed penalty amount.

The IRS previously indicated that it would begin issuing Letter 226J in "late 2017." Employers should note that a response is due 30 days from the date of the Letter 226J. The IRS will acknowledge your response to Letter 226J with an appropriate version of Letter 227, which is a series of five different letters describing further actions you may need to take. The IRS has not yet released sample versions of Letter 227.

Links to additional Information:

[*IRS's Understanding your Letter 226-J webpage*](#)
[*Form 14764*](#)
[*Form 14765*](#)

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