

IRS Letter 226J Checklist

Beginning in 2017, the IRS started reviewing past ACA filings to determine if employers offered affordable minimum value group benefits to at least 70% of their full-time employees in 2015. Last year, 2016 came under the same scrutiny with the new minimum percent of at least 95%. This year, 2017 will be under review.

If employers did not offer affordable coverage or didn't provide minimal value, employees could obtain individual coverage on the exchange and qualified for a premium tax credit. If even one employee during a month in the year qualified for the tax credit, the employer could be subject to the Employer Shared Responsibility Payment. The IRS will inform you of your liability for the payment in a letter – IRS Letter 226J.

The IRS will determine your liability by examining the indicator codes entered on employees' 2017 Forms 1095-C, the information entered on Form 1094-C and employees' tax returns.

Employers liable for the penalty will receive Letter 226J, which will be accompanied by Form 14765, instructions and other attachments. Your response is due back to the IRS within 30 days.

Step One – Determine if you filed for the year in question.

Assuming that you filed your 1094/1095s for years 2015 – 2018, find your copies for review. If the IRS suspects you're a 1095-C non-filer, you will receive Letter 5699. You have 30 days to respond. Forms 1095 are information returns, which means that in addition to liability for an Employer Shared Responsibility penalty, you may be liable for penalties for failing to file information returns and to provide employees with their copies.

Step Two - Compare the codes.

Determine whether the IRS made the mistake by miscoding Form 14765. If the IRS didn't make a mistake, pull out your Forms 1095-C and review your coding for Lines 14 and 16. Contact your employee benefits provider or Net at Work for assistance if needed.

Step Three – Review Employees listed on Form 14765

Form 14765 lists the employees for whom you may be liable for a penalty. Evaluate each employee on the list to determine:

- Did they work full-time (120 hours per month) in the month in question?
- Did they qualify for the premium tax credit (because you did not offer affordable coverage with minimum value)?
- Did they decline your coverage?
- Were they actually enrolled but not reported as such?

Step Four – Complete Form 14764 and 14765

After reviewing your findings, and seeking appropriate counsel, respond to the IRS on Form 14764 (included as an attachment to the Letter 226-J) with your corrections. Be sure that you respond within 30 days of receipt of the Letter 226J,

IRS Responses

The IRS has created several letters to respond to your Form 14764.

Letter 227-K - acknowledges receipt of your information and reduces the penalty down to \$0.

Letter 227-J acknowledges the IRS' receipt of Form 14764 and that the penalty will be assessed. You're asked how you would like to pay—either in full or in installments.

Letter 227-L shows that the IRS revised the penalty. It includes an updated Form 14765. You can agree or request a meeting with the manager and/or the IRS' Appeals function.

Letter 227-M shows that the penalty didn't change. You can agree or request a meeting with the manager and/or Appeals.

Letter 227-N acknowledges the decision reached in Appeals and shows your penalty based on the Appeals review.