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## Health Benefits

# Circular Letter

December 15, 2017  
Circular Letter: 600-070-17  
Distribution: Special

**To: All Health Benefits Officers and Assistant Health Benefits Officers**  
**Subject: Employer Shared Responsibility Payment Letter under the Affordable Care Act**

### Purpose

The purpose of this Circular Letter is to inform CalPERS' Employers of the Internal Revenue Service's (IRS) Employer Shared Responsibility Payment letter ([Letter 226-J](#)) for calendar year 2015. Letter 226-J, to be issued in late 2017, is the initial letter provided to impacted applicable large employers (ALEs) notifying them that they may be liable for an employer shared responsibility payment (ESRP) for not complying with the employer shared responsibility requirements, also known as the "employer mandate."

### ACA Requirements

Under the Affordable Care Act's (ACA) employer mandate, ALEs are generally required to offer affordable health coverage that meets minimum value to at least 95 percent of their full-time employees (and their dependents) or incur potential penalties.<sup>1</sup> ALEs are also generally required to report to the IRS about the coverage offered (or not offered) to their full-time employees on Form 1095-C and provide a copy of this form to their employees.

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<sup>1</sup> For information about ALEs, penalties, and other terms and provisions related to the employer shared responsibility requirements, visit: <https://www.irs.gov/affordable-care-act/employers/employer-shared-responsibility-provisions>.

## Background

Beginning in 2016 for the 2015 calendar year, ALEs were required to begin reporting coverage information to the IRS. In general, an ALE is an employer who had on average at least 50 full-time employees or full-time equivalent employees during the prior calendar year. Refer to the IRS webpage, [Determining if an Employer is an ALE](#),<sup>2</sup> for more information.

As a reminder, for calendar year 2015 the IRS offered several forms of transition relief, including exempting ALEs with 50-99 full-time/full-time equivalent employees in the prior year from the 95 percent requirement. Instead, ALEs with 100 or more full-time/full-time equivalent employees could meet the requirement by offering coverage to at least 70 percent of their full-time employees. All ALEs became subject to the 95 percent requirement beginning in 2016.

For additional information regarding transition relief, refer to the IRS webpage [Understanding the Different Types of 2015 Transition Relief under the Employer Shared Responsibility Provisions](#).<sup>3</sup>

## Letter 226-J

The IRS plans to start issuing [Letter 226-J](#) by the end of 2017 to notify ALEs of any potential ESRP they may owe for the 2015 calendar year. Letter 226-J is a preliminary assessment notification that affords ALEs the opportunity to agree or disagree with the assessed liability before the final assessment is made. ALEs will have 30 days from the date of the letter to respond to the proposed assessment.

The determination of whether an ALE may be liable for an ESRP and the amount of the proposed payment are based on information from Forms 1094-C and 1095-C filed by the ALE and the individual income tax returns filed by the ALE's employees.

Included with Letter 226-J will be:

- [ESRP Response Form 14764](#)<sup>4</sup>: This form is for employers to indicate agreement or disagreement with 226-J.
- [Employee Premium Tax Credit Listing Form 14765](#)<sup>5</sup>: This form lists, by month, assessable full-time employees who for at least one month received a Premium Tax Credit and no safe harbor or other relief from the ESRP was applicable.

The IRS will respond to ALEs with Letter 227 to acknowledge receipt of their letter and describe further actions the ALE may need to take. ALEs who do not respond to Letter 226-J or 227 may be issued a notice and demand for payment of the proposed amount.

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<sup>2</sup> <https://www.irs.gov/affordable-care-act/employers/determining-if-an-employer-is-an-applicable-large-employer>

<sup>3</sup> <https://www.irs.gov/affordable-care-act/employers/understanding-2015-transition-relief-under-employer-shared-responsibility-provisions>

<sup>4</sup> <https://www.irs.gov/pub/irs-pdf/f14764.pdf>

<sup>5</sup> <https://www.irs.gov/pub/irs-pdf/f14765.pdf>

Additional information regarding Letter 226-J and the ESRP process can be found on the IRS websites [Understanding your Letter 226-J](#)<sup>6</sup> and [Question and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act](#) (Questions 55-58).<sup>7</sup>

## Next Steps

It is important that CalPERS' Employers that are ALEs actively watch for Letter 226-J and review and respond timely to the IRS upon receipt. In preparation, CalPERS' Employers that are ALEs should ensure that they have their 2015 reporting Forms 1094-C and 1095-C readily available.

CalPERS continues to assess laws and regulations related to the ACA, which may affect CalPERS' Employers. While we make every effort to assist CalPERS' Employers, this Circular Letter should not be acted upon without specific legal advice. CalPERS encourages each CalPERS Employer to thoroughly review the Circular Letter, and the corresponding guidance discussed within, with its own legal counsel to understand how it might specifically apply to them.

## Questions

If you have any questions, please contact our Customer Contact Center at **888 CalPERS** (or **888 225-7377**).

Shari Little, Chief  
Health Policy Research Division

**Attachment:** Sample 226-J Letter

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<sup>6</sup> <https://www.irs.gov/individuals/understanding-your-letter-226-j>

<sup>7</sup> <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act>