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Employee Benefits – Question of the Month

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Q: We just received a scary letter from the Internal Revenue Service saying we owe an "Employer Shared Responsibility Payment (ESRP)." It appears they think we didn't offer coverage to some or all of our employees in 2015 and now owe a (very large!) penalty under the ACA. We offer coverage to *every* full-time employee, and as far as we know it meets all the requirements of the ACA. What is going on here? How should we respond? What can you do to help?

A: First off, you need to take this letter very seriously and contact your attorney right away! You likely have only 30 days to respond, and failure to do so could result in a final penalty assessment.

As for what this is all about, in December 2017 the IRS started issuing these proposed penalty assessment letters (called 226J letters) to employers that:

1. Failed to meet (or the IRS believes they failed to meet) one or more of their obligations under the employer mandate in 2015;
2. Had an employee who received subsidized coverage through the Exchange in 2015; and
3. Filed a 1094-C with the IRS in 2016.

So far, **every penalty letter we have learned about was received by an employer that reasonably believed it met the requirements of the ACA in 2015 and therefore should not owe a penalty.** The problem seems to be either that the employer's 1094-C form (filed in 2016) reported inaccurate information to the IRS or that the IRS system is reading it wrong.

We would be happy to work with you and your attorney to locate any necessary documentation for your appeal. However, we can't act as your attorney or prepare your appeal for you. Some of the things we may be able to help with include:

- Locating documentation that you offered group health coverage to the employee(s) who received a subsidy;
- Providing documentation that the coverage you provided in 2015 met minimum essential coverage and/or minimum value requirements;
- Verifying cost of coverage to employees in 2015 and its affordability;
- Evidence of employees' enrollment in or waiver of coverage offered; and
- Other similar information.

You or your attorney may contact me or a member of your account team for assistance.