

Lyons Companies: Compliance Alert

Lyonsinsurance.com

LETTER 226Js AND LETTER 227s

EMPLOYER MANDATE PENALTY COLLECTION EFFORTS

Issue Date: July 16, 2018

The IRS began assessing §4980H (Employer Mandate) penalties late in 2017 by sending Letter 226Js. Letters are being received by applicable large employers who appear to owe a penalty based on the self-reporting submitted via a Form 1094-C and 1095-Cs for the 2015 calendar year, the first year that §4980H went into effect. Rather than sending out all Letter 226Js at once, the IRS seems to be sending them out in batches; some employers have just received their letter in the last couple of weeks. In other words, just because an employer has not yet received a letter, that does not necessarily mean it's not still on its way. In addition, once the IRS finishes collection efforts for 2015, it is likely to begin the collection process for 2016, and 2017, and so on...

Upon receipt of a Letter 226J, the employer has 30 days to either make payment or appeal the proposed assessment (unless an extension for an additional 30 days is obtained). Since many of the proposed assessments are the result of a misunderstanding of the offer of coverage requirements and/or employer reporting mistakes, most employers have the option to appeal, arguing that coverage was actually offered in accordance with §4980H requirements. We have worked on appeals for more than 25 employers, in all cases successfully appealing any proposed assessment that was not reflective of the coverage actually offered by the employer. In other words, submitting an adequate explanation and supporting documentation results in the IRS's being willing to dismiss the assessments.

To appeal a proposed assessment under §4980H(a), we suggest submitting the following:

- Letter/explanation disputing all or part of the assessment;
- Completed Form 14764 indicating disagreement with the assessment and that no payment/partial payment is being sent in;
- Revised Form 1094-C as an illustration of how the reporting should have been handled; and
- Revised coding on Form 14765 for employees listed, if applicable.

To appeal a proposed assessment under §4980H(b), we suggest submitting the following:

- Letter/explanation disputing all or part of the assessment;
- Completed Form 14764 indicating disagreement with the assessment and that no payment/partial payment is being sent in;
- Revised coding on Form 14765;
- Summary of Benefits & Coverage (SBC) indicating minimum value coverage; and
- Employee contribution and pay information for employees list on Form 14765.

Generally, within 4–6 weeks after IRS receipt of the employer's appeal to the Letter 226J, the employer will receive a Letter 227K, 227L, or 227M indicating whether the IRS agrees with the appeal. If the IRS agrees with the appeal, no further action is required. If the IRS only partially agrees, or disagrees completely, the employer could choose to appeal again, perhaps providing a more detailed explanation and additional supporting documentation; or the employer could choose to make payment as assessed.

If you need help with a response to an IRS letter, please contact us at 844.LYONS-HCM or lyonshcm@lyonsinsurance.com.

More information can be found on IRS FAQ page specific to:

- Letter 226J: <https://www.irs.gov/individuals/understanding-your-letter-226-j>.
- Letter 227: <https://www.irs.gov/individuals/understanding-your-letter-227>.