



Monthly Newsletter

by JA Counter

December 2017

IRS to Begin Mailing 'Pay or Play' Penalty Letters

The IRS has announced that it will begin mailing employers letters informing them of their potential liability for a "pay or play" penalty for the 2015 calendar year in late 2017. However, before any penalty is assessed and notice and demand for payment is made, employers will have an opportunity to respond to the agency.



What Will the Letter Contain?

The IRS plans to issue [Letter 226J](#) to [applicable large employers](#) (ALEs)—generally those with **at least 50 full-time employees**, including full-time equivalent employees, on average during the prior year—if it determines that, for at least one month in the year, one or more of the ALE's full-time employees was enrolled in a qualified health plan for which a premium tax credit was allowed (and the ALE did not qualify for an affordability safe harbor or other relief for the employee). Letter 226J will include, among other things:

- A penalty payment summary table, itemizing the proposed payment by month;
- An "employee premium tax credit list" which lists, by month, the ALE's employees who for at least one month in the year were full-time employees allowed a premium tax credit and for whom the ALE did not qualify for an affordability safe harbor or other relief;
- A description of the actions the ALE should take if it agrees or disagrees with the proposed penalty payment; and
- A response form.

The response to Letter 226J will be due by the response date shown on the letter, which generally will be **30 days** from the date of Letter 226J. Letter 226J will also contain the name and contact information of a specific IRS employee that the ALE should contact if the ALE has questions about the letter.

How Does an ALE Make a Pay or Play Penalty Payment?

If, after correspondence between the ALE and the IRS, the IRS determines that an ALE is liable for a penalty payment, the IRS will assess the payment and issue a notice and demand for payment, **Notice CP 220J**. That notice will instruct the ALE on how to make a payment, if any. Notably, an **ALE will not be required to include a payment on any tax return that it files or make a payment before notice and demand for payment.**

[Click here](#) for more information from the IRS.

Visit our ["Pay or Play" \(Employer Shared Responsibility\)](#) section for more on pay or play compliance.

Electronic Submissions of Form 300A Data Due by Dec. 15

The federal Occupational Safety and Health Administration (OSHA) has finalized **December 15, 2017** as the date by which certain employers are required to electronically submit data from their 2016 Forms 300A to OSHA.



Who Must Comply?

By December 15, 2017, the following establishments—if currently required to comply with [OSHA's recordkeeping requirements](#)—are required to electronically submit data from their 2016 Forms 300A to OSHA:

- Establishments with **250 or more employees**; and
- Establishments in [certain designated industries](#) with **20-249 employees**.

However, according to OSHA, establishments in California, Maryland, Minnesota, South Carolina, Utah, Washington, and Wyoming are not yet required to submit data. Establishments located in these and other OSHA ["State Plan" states](#) should check with their states for the latest requirements.

Where Do I Submit the Data?

Covered establishments must submit the required data through OSHA's online [Injury Tracking Application](#).

Check out our [Electronic Recordkeeping Requirement](#) page for helpful FAQs on this requirement.

New Guidance on QSEHRAs Released

The IRS has released guidance further clarifying the rules regulating qualified small employer health reimbursement arrangements (QSEHRAs). QSEHRAs—which are health reimbursement arrangements exempt from the Affordable Care Act's market reforms—may be offered by employers with **fewer than 50 full-**



time equivalent employees that do not offer a group health plan to any of its employees to reimburse employees for medical expenses, **including individual health insurance policy premiums.**

Guidance Highlights

Highlights of the guidance are as follows:

- **Written Notice Deadline:** An employer that provides a QSEHRA during 2017 or 2018 must generally furnish its initial written notice to its eligible employees by the later of (a) **February 19, 2018, or** (b) 90 days before the first day of the plan year of the QSEHRA. **Q&A #38 of the guidance explains what information must be included in the notice.**
- **"Same Terms" Requirement:** Employers are required to provide the QSEHRA on the **same terms** to all eligible employees. However, the guidance states that QSEHRA payments or reimbursements **may vary** based on the **age of covered individuals or the number of individuals covered** in accordance with the variation in the price of an insurance policy in a relevant individual health insurance market.
- **Form W-2 & PCORI Requirements:** An employee's permitted benefit under a QSEHRA must be reported in box 12 of his or her

Form W-2 using code FF. In addition, QSEHRA sponsors are subject to the [Patient-Centered Outcome Research Institute \(PCORI\) fee](#), which generally requires them to file Form 720, *Quarterly Federal Excise Tax Return*, annually by July 31 of the year following the last day of the plan year.

[Click here](#) to read the IRS guidance in its entirety.

For more on QSEHRAs, please visit our new [Qualified Small Employer HRAs \(QSEHRAs\)](#) page.

How Hiring Holiday Help Impacts 'Pay or Play' Compliance

Employers that hire seasonal workers this holiday season are reminded that there is an exception when measuring workforce size to determine whether they are an applicable large employer (ALE) subject to the Affordable Care



Act's employer shared responsibility ("pay or play") and corresponding information reporting provisions.

Seasonal Worker Exception

If an employer's workforce exceeds 50 full-time employees (including full-time equivalent employees) **for 120 days or less (or 4 calendar months) during the preceding calendar year**, and the employees in excess of 50 who were employed during that period were seasonal workers, the employer is **not considered an ALE for the current calendar year**. A seasonal worker for this purpose is an employee who performs labor or services on a seasonal basis (e.g., retail workers employed exclusively during holiday seasons are seasonal workers).

Seasonal Worker Versus Seasonal Employee

While the terms "seasonal worker" and "seasonal employee" are both used in the pay or play provisions, **only the term "seasonal worker" is relevant for determining whether an employer is considered an ALE.** For this purpose, employers may apply a reasonable, good faith interpretation of the term "seasonal worker." For more information on the difference between a seasonal worker and a seasonal employee under pay or play, please refer to [IRS Pay or Play Q&A #26](#).

Check out our ["Pay or Play" \(Employer Shared Responsibility\)](#) section for additional details.

5 Tips for Office Holiday Party Planning

At many companies, the annual office holiday party is a time-honored tradition. Whether it's big or small, lavish or simple, your holiday party is a great opportunity to gather your employees for recreation, motivation, team building, and recognition. Watch the video below to learn some simple tips for making your company holiday party a success.



For more information on serving alcohol at company-sponsored holiday parties, please read the U.S. Small Business Administration's [Tips to Avoid Company-Sponsored Holiday Party Liability](#) blog entry.

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