



School Law FYI

FEBRUARY 2018

IRS Sending Affordable Care Act Notices

The Internal Revenue Service (IRS) has been sending notices to some school districts proposing an Employer Shared Responsibility Payment (ESRP) that the IRS asserts the districts owe pursuant to the Affordable Care Act (ACA). Districts that receive such a notice should act promptly to avoid any liability with the IRS.

Under the ACA, a school district that qualifies as a large employer (50 or more full-time equivalent employees) is required to provide affordable minimum essential coverage to 95 percent of the employer's employees (70% for 2015). If a full-time employee of a district who is a large employer receives a premium tax credit (PTC) through an ACA marketplace, the employee reported to the ACA marketplace: (1) that the district's health coverage was not affordable, (2) that the district did not provide minimum essential coverage, or (3) that the district did not offer the employee coverage. If a district receives a notice from the IRS proposing an ESRP, a district employee certified to the marketplace that the district's coverage offered to the employee is described in the preceding sentence.

Just because a district receives a notice does not mean the district actually owes any money. It is possible that an employee could mistakenly represent to the IRS that the coverage provided by the district is unaffordable. As many districts are aware, the ACA is complicated and confusing.

If a district receives a notice from the IRS proposing an ESRP owed by the district, the district generally has 30 days from the date of the notice to respond to the IRS. To avoid the assessment of ESRP, districts should timely respond to any notice with detailed response including supporting documentation. This includes identifying the specific errors and explaining to the IRS why no penalty is owed. We recommend that districts work with district counsel in responding to the IRS notices.

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