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## The IRS is Beginning 2016 Pay or Play Enforcement: Here's What You Need to Know

In late 2018, the IRS began issuing enforcement letters related to employers' compliance with the employer shared responsibility rules under the Affordable Care Act (ACA) for the 2016 calendar year. These letters, known as [Letter 226-J](#), inform employers of their potential liability for an employer shared responsibility penalty, if any, for 2016.

### Who Will Receive These Letters

These letters are only sent to employers subject to the employer shared responsibility rules, known as applicable large employers (ALEs). The determination of whether an ALE may be liable for a penalty, and the amount of the proposed penalty in Letter 226-J, 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.

### Next Steps for Those Who Receive a Letter

ALEs must respond to Letter 226-J—either agreeing with the proposed employer shared responsibility penalty or disagreeing with part or all of the proposed amount—before any employer shared responsibility liability is assessed and notice and demand for payment is made. The response is due by the response date shown on Letter 226-J, which is generally 30 days from the date of the letter.

Letter 226-J provides instructions for how the ALE should respond in writing, as well as the name and contact information of a specific IRS employee that the ALE should contact if the ALE has questions about the letter.

## FSA Limit to Increase for 2019

The ACA imposes a dollar limit on employees' salary reduction contributions to health flexible spending accounts (FSAs) offered under cafeteria plans. This dollar limit is indexed for cost-of-living adjustments and may be increased each year.

### New Limit Amount

In November 2018, the IRS increased the FSA contribution limit from \$2,650 to \$2,700 for taxable years beginning in 2019. This increase reflects the steady contribution limit increase from the past few years.

### Next Steps

Employers should ensure that their health FSA will not allow employees to make pre-tax contributions in excess of \$2,700 for 2019, and they should communicate the 2019 limit to their employees as part of the open enrollment process.

Contact Baldwin Krystyn Sherman Partners today to obtain customizable employee communications that you can use to let employees know about this limit increase.



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