At-A-Glance Guide *from*
Empyrean Benefit Solutions

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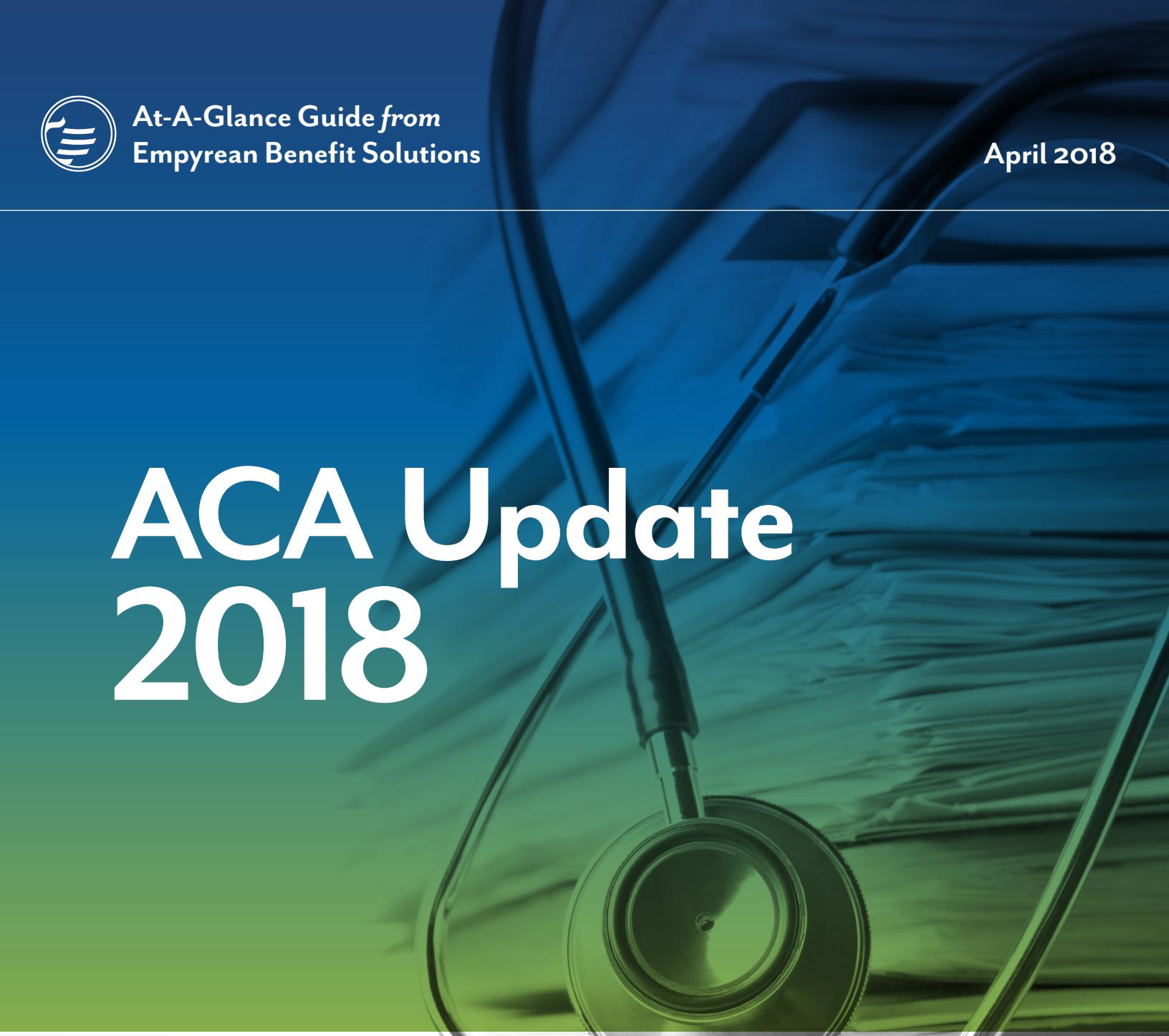
ACA Update 2018



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ACA Update 2018

INTRODUCTION

Over a year into the Trump presidency and the fate of the Affordable Care Act (ACA) is still as unclear as ever — at least for Employers.

Despite numerous promises made during the 2016 presidential campaign, as well as several alternatives put forth by Republican leaders, Congress has so far been unable to fully repeal or replace the previous administration's landmark health care law.

Instead, Republicans successfully passed the Tax Cuts and Jobs Act in December 2017 – a major tax overhaul that also effectively eliminates the ACA's Individual Mandate (more formally known as the individual shared responsibility payment).

The individual mandate imposes a fine on most Americans who choose to forgo health insurance. Because the fine is considered a tax on those without coverage, this aspect of the ACA could be altered by the recent tax bill – even without Democrats' support. Now, the individual penalties for non-coverage will drop to $0 beginning in 2019, rendering a significant pillar of the ACA null and void. However, without further changes, the Employer Mandate remains the law of the land. This means the requirements to offer minimum essential, minimum value, and affordable coverage to full-time employees and annually report these details continues to apply to large Employers.

To date, there has been no announcement from the Internal Revenue Service as to if – or how – Employers' complex ACA reporting will be impacted once the individual mandate ends.

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This At-A-Glance examines the latest developments surrounding Employers' ACA requirements, in order to help you stay ahead of compliance challenges and prepare for potential shifts as the ACA continues to evolve and change.

Introduction, *Cont'd.*

Adding a heightened sense of urgency to this issue is the recent release of proposed penalty assessment notices, sent to Employers that failed to comply with regulations, submitted questionable data, and/or who had one or more full-time employees receive a premium tax credit (PTC) to purchase coverage on a public exchange during the 2015 tax year. The IRS is finally acting on its authority to collect fines for ACA non-compliance, and these fines could end up impacting Employers in a very big way.

The IRS proposed penalty notices — **known as Letter 226J** — signal another important ACA development: The IRS has finalized its methods for processing and identifying errors and inconsistencies in ACA data, which likely means swifter delivery of penalty assessments going forward and the need for Employers to remain vigilant in ensuring benefit offers for full-time employees continue to be monitored and reported accurately according to IRS section 6055 and 6056 reporting rules.

With 2017 being the third year of ACA reporting, the potential for penalty assessments now spans three years. The IRS has promised to review 2016 reporting more quickly, meaning Employers may have to answer for ACA compliance confusion — and subpar vendor failures — possibly for multiple plan years at a time. This could mean huge headaches, more assessments to research, and the stress of preparing a timely response to the IRS, or else Employers could be required to pay the proposed assessment.

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Eliminating the Individual Mandate

One of applicable large employers' (ALEs) central ACA responsibilities has been to offer minimum essential coverage, *or MEC*, to the majority of eligible full-time employees.

ALEs are Employers with 50 or more full-time employees. ALEs faced their first year of mandatory ACA compliance beginning with the 2015 tax year. During the inaugural year, they were required to provide MEC to at least 70% of their full-time employees (FTEs). For tax years 2016 and beyond, this requirement increased to 95% of FTEs, reducing the margin of offer error to 5%.

Employer plan requirements were designed to ensure eligible FTEs have access to minimum essential coverage through their employer, which allows them to avoid penalties under the individual mandate if elected. ALE ACA data is used to report if employees enrolled in or otherwise maintained health coverage as required, and verifies that an applicable large employer offered MEC to full-time employees as required by the Employer Mandate.

In the case of an employee that received a federal premium tax credit to purchase individual coverage through a public exchange, the ALE data is used to confirm if the employee received a qualifying offer of coverage through their Employer. The data is also used to determine if the Employer is responsible for a penalty assessment due to non-compliance with any aspect of the Employer Mandate.

The end of the individual mandate penalty for health coverage, which goes into effect with plan year 2019, means reported data will no longer be used to assess individual fines for

Applicable large employers' (ALEs) compliance and reporting requirements have not changed.

Employers will still be required to complete their annual ACA reporting — *even without the individual mandate in effect.*

Eliminating the Individual Mandate, *Cont'd.*

employees who do not choose to elect coverage or had gaps in coverage exceeding two months. However, Employers will still face enormous potential financial risk from non-compliance failures, reporting mistakes, and employees erroneously applying for and receiving a PTC on public exchanges.

ALE compliance and reporting requirements have not changed. Employers will still be required to complete their annual ACA reporting requirements — *even without the individual mandate in effect.*

Past Problems and Future Concerns

While many Employers struggled to manage their first year of required ACA compliance in 2015, the IRS announced that it would accept a demonstrable "good-faith effort" when it came to reporting and filing.

Employers had to learn to work with entirely new tax forms, which requires monthly reporting of offers and coverage using IRS code logic that is complex and confusing. Employers have also had to adapt to change: The IRS has added or deleted reported codes and rules each year. The IRS has extended the "good-faith effort" standard to each reporting period since — including the latest 2017 reporting cycle.

This standard allows some relief of penalties, provided Employers can prove they complied with coverage requirements and took all appropriate measures to attempt to complete their reporting accurately and timely. However, the "good-faith effort" allowance does not provide protection from potential penalties. As IRS Letter 226J arrives with potential penalty assessments, Employers must quickly research and respond to those assessments.

ACA penalties can reach up to $3 million per Employer[1] — a payout that no organization is prepared to make. However, penalties aren't limited to simply failing to provide adequate coverage. The reporting process itself presented Employers and some third-party vendors with a slew of challenges that many were not prepared to handle. Much like how incorrectly filling out one's personal tax forms might trigger an audit by the IRS, so too could mistakes made on ACA forms trigger an IRS penalty notice — with potentially massive financial consequences.

A significant issue that is triggering some penalty notices is a direct result of how vendors processed clients' data and how thoroughly and accurately ACA forms were completed.

Past Problems and Future Concerns, *Cont'd.*

A significant issue that is triggering some notices is a direct result of how vendors processed clients' data and how thoroughly and accurately ACA forms were completed. ACA forms were uncharted territory during the initial reporting year, and there were seemingly endless questions from Employers and agencies alike as they sought to understand how to properly file and complete the new tax forms.

As some Employers have recently learned, poor practices by either vendors or in-house teams may have led to crucial form fields being left blank. This could be a disastrous error, as the IRS interprets a blank form field for potential penalty assessments.

This simple mistake is one of the many reasons employers must ensure their ACA solution — be it an in-house process or a partner's technology process — follows and maintains alignment with best and required practices every year. A technology partner should configure and update their ACA solution each year to match the latest IRS 1095 form changes and coding logic, because an outdated ACA solution could cause reporting errors. Subpar vendors, thinly stretched internal teams, and "ACA-in-a-box" alternatives can all leave Employers vulnerable to big risks that are easy to avoid with the right support.

ACA Penalties Have Arrived

For those Employers that have received Letter 226J, the extensive delay between when they completed their reporting and the penalty notification may pose unique difficulties as HR teams begin to review their proposed penalty assessments.

Letter 226J is not a bill. Instead, this notice gives Employers an opportunity to respond to the proposed fines: Employers can register their agreement or disagreement with the letter using Response Form 14764, which is included with Letter 226J.

The IRS provides a short response period of just 30 days after Letter 226J is *generated — not received* — in order to appeal. If the IRS does not receive a response by the deadline specified in the letter, a bill for the proposed penalty amount claimed on the notice will follow.

Because the IRS clock starts ticking as soon as the letter is generated, even the notification and appeals process leaves an Employer open to risk. Possible time lapses between when the IRS generates a letter and its actual mailing date, mailing transit time, and interoffice delivery time can all shorten the actual window during which an Employer can research and respond to the notice.

Plus, intended recipients may potentially be out of office, on leave, or no longer employed, which can add to the risk of a delayed response. Employers must stay diligent and be on the lookout for any correspondence from the IRS — even if they do not expect to receive a notice.

For Employers that believe they have received a penalty notice in error (for example, if an employee who was offered MEC declined coverage, then applied for and received a premium tax credit through an exchange), data review and documentation will need to quickly occur.

Having a thorough ACA partner and reliable system of record can make the penalty assessment appeals process much simpler and less stressful to manage.

ACA Penalties Have Arrived, *Cont'd.*

Depending on the data integrity and usability of your system, retrieving or verifying older data might be easier said than done. And if your company has experienced a merger or acquisition in the last few years, this can increase the data challenges you may already be facing, as prior systems and processes may be completely different (or no longer available).

Because ACA penalty notices may be triggered by several scenarios, it is important that Employers ensure that any penalty notices received are appropriately and promptly handled – especially if their organization, ACA processes, or vendors have changed. According to some experts, the number of employers expected to receive a penalty notice could be anywhere from several hundred to several thousand companies.[2]

As Employers begin appealing their 2015 ACA proposed penalty assessments, the processes involved continue to highlight the importance of having a thorough ACA reporting partner and reliable and easy-to-access system of record for all reporting elements required under the Employer Mandate, which can make the appeals process much simpler and less stressful to manage.

Looking Ahead: Employers Must Stay Vigilant

Employers were not sure how the Trump administration's repeal-and-replace effort would alter what has become arguably one of the most risk-laden aspects of employee benefits administration. For recipients of Letter 226J, the reality of the Employer Mandate has arrived with full force, resulting in an urgent review of ACA reporting responsibilities and liabilities.

Some Employers are taking a stand against their proposed penalty assessments, claiming that faulty public exchange systems failed to notify them of potential fines if employees applied for and received a federal subsidy to help purchase individual insurance. Federal and state exchanges were supposed to send notices to Employers of the potential fines they could face due to their employee receiving a PTC. These employers say they never received such warnings in 2015, and still had not received them even in 2017.[2]

Employers continue to face challenges with Employer Mandate reporting obligations. Now, many are wondering one big question: ***What's next for the ACA?***

Despite President Trump's claim late last year that Obamacare is "gone,"[3] the reality to date contradicts that claim. As IRS proposed penalty letters continue to arrive across the country, it remains absolutely critical that Employers do not lose sight of the enormous impact that ACA Employer Mandate requirements still have on their organization. With the penalty assessment process now underway, Employers must continue to recognize the requirements of the health care law, even months after President Trump declared Obamacare to be "dead."[3]

As IRS proposed penalty letters continue to arrive across the country, it remains absolutely critical that Employers do not lose sight of the enormous impact that ACA requirements still have on their organization.

Looking Ahead: Employers Must Stay Vigilant, *Cont'd.*

As proposed penalties are assessed with each passing day, it's possible that the ACA may return to the larger public dialogue. **Meanwhile, however, it's important to recognize that no changes to the Employer Mandate have been announced.***

With or without the ACA in effect, health care coverage and employee benefits will remain a key aspect of Employers' strong talent recruitment and retention strategies. And without any official changes, Employers must continue to comply with the ACA's Employer Mandate requirements.

Enlisting the support of a trusted ACA partner can bring peace-of-mind to your business and team, even when navigating the toughest compliance concerns. Look for the following when evaluating a potential partner, or if reconsidering your current vendor:

- Continuously updated technology and processes to ensure adherence to the latest IRS standards and form layouts, including tools to quickly and accurately apply codes for Form 1095-C.
- A dedicated team of compliance experts to ensure every aspect of your solution is ACA compliant from top to bottom.
- Proven year-over-year ACA successes with organizations of your same size and complexity.
- Flexible options to meet your company's unique needs, from full-service forms fulfillment to raw data delivery.

As evidenced by the recent release of Letter 226J, no company can afford to bet on if — *or when* — Employers' ACA responsibilities will be significantly altered or repealed. Managing compliance can be a stressful and daunting undertaking, *but it doesn't have to be.* A best-in-class ACA partner will help alleviate significant burdens, boost your team's productivity, and complete your requirements with confidence.

If you have questions or concerns about your current ACA processes, reach out to Empyrean for a consultative conversation. Our team can help you determine and address your risks and needs, with technology and services to manage every level of ACA complexity.

*As of publication early April 2018

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About Empyrean

Empyrean Benefit Solutions manages employee health and welfare benefits programs, combining the industry's most modern, client-adaptive, and configurable benefits technology platform with expert, responsive service to deliver Hi-Touch Benefits Administration. Empyrean provides market-leading enrollment, eligibility management, ACA reporting, and other plan administration services that empower employers, insurance brokers, and healthcare exchanges to meet ever-evolving benefit challenges. Founded in 2006, Empyrean's integrated platform serves over three million annual participants across a wide spectrum of sizes, industries, and complexities.

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