

Responding to an APTC Letter from Covered California

The following is information that you should find helpful when explaining the purpose of the APTC letter (the Letter) to your client and advising them on next steps.

Please note that the following is provided for informational purposes only. It is not legal or tax advice. Claremont Insurance Services is not a law firm or a tax advisory firm and strongly recommends that an Applicable Large Employer receiving such a letter immediately consult with their employment attorney.

Applicable Large Employers (ALEs), which are those with 50 or more full-time plus full-time equivalent employees, are required to offer, to all their full-time employees, affordable coverage that meets minimum value standards. If an ALE does not offer coverage or the coverage offered is not affordable or of minimum value, then the ALE may be subject to penalty (which is referred to in the Letter as the Employer Shared Responsibility “ESR” penalty).

Covered California is required under the ACA to send a notification to any employer when an employee enrolls with the exchange for individual coverage and is found eligible for the subsidy (referred to as “APTC” in the letter). By sending this Letter, Covered California is informing the employer that they risk incurring an ESR penalty if they are an ALE and if the employee was not offered coverage or if that coverage does not meet affordability or minimum value requirements.

If the employer is not an ALE, then it is not obligated to offer coverage, is not subject to affordability and minimum value requirements and this is just an informational letter.

However, if the employer is an ALE, we recommend that the employer, take the following steps:

- Immediately notify their employment attorney, send them a copy of the Letter and develop a response strategy with their employment attorney.
- Assemble all records and documents that demonstrate that the employee was offered coverage. If the employee accepted coverage, there should be a signed employee application demonstrating that and which plan they elected. If the employee declined coverage, there should be a waiver form with the employee’s signature. These documents will be critical to demonstrating that the employee was offered coverage.
- Assemble all records that demonstrate that the coverage offered was both affordable and of minimum value.
 - Affordability - Employees were told how much their portion of the premium would cost. Assemble this information as well as the employee’s pay information from that time period so that a calculation can be made as to what percentage of the employee’s pay would have been spent on the employee’s portion of the premium. The percentage used to determine affordability is set by the affordability safe harbor that the employer selected when reporting to the IRS on forms 1094 and 1095.

- Minimum Value - Employees were provided with Summaries of Benefits and Coverage (SBC's) for each plan offered. Assemble those documents. They should demonstrate that the plans offered were of minimum value.
- If after assembling this information and after consulting with their employment attorney the employer feels that they satisfied all requirements, then they should consider appealing Covered California's determination that the employee was eligible for APTC and they should separately engage with the IRS to determine next steps.

The ESR payment can be substantial. We strongly recommend taking the above steps immediately and filing appeals and contacting the IRS well before any deadlines. This should all be done in concert with an employment attorney familiar with these provisions of the ACA.