

## Publications

# An Action Plan For Employers Who Receive Exchange Notices (Spoiler Alert- the Action Plan May Be “Do Nothing”)

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In recent weeks, many employers have been receiving notices from the federally-facilitated marketplace (“FFM”), or state-administered public exchanges (generally, “Exchanges”), advising that one of their employees has been found eligible for advance payments of a premium tax credit or cost sharing reduction (“APTC”) during 2016. The notices advise that when the employee applied for health coverage through the Exchange, he or she indicated one of the following: (1) no offer of health coverage was made by the employer; (2) an offer of health coverage was made but it wasn’t “affordable” or “minimum value”; or (3) the employee couldn’t enroll in health coverage because he or she was in a waiting period. Finally, the notice advises the employer that it can appeal the determination that the employee is eligible for the APTC.

The question for employers is: what to do with these notices? As an initial matter, it is important to reinforce that **receipt of the notice does NOT mean that the employer has been assessed a penalty under the Affordable Care Act’s (“ACA’s”) employer shared responsibility, or “employer mandate” rules, for failing to offer sufficient coverage to the employee.** Those penalties will be assessed by the Internal Revenue Service (“IRS”) under a completely different process, described in the attached memo. However, there are reasons why an employer might want to take action, including possibly filing an appeal with the Exchange, if there is reason to believe that the employee provided incorrect information to the Exchange about his or her access to employer-sponsored coverage. Please see the attached memo for further information.

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