# IRS RULES NO WAIVER OF ACA EMPLOYER MANDATE PENALTIES Q3 2017 Partner Newsletter – Article Summary

### The Patient Protection and Affordable Care Act

* Signed into law by President Barack Obama on March 23, 2010
* AKA Affordable Care Act, ACA, or Obamacare
* The ACA stipulates “employer shared responsibility rules” which require applicable large employers (ALEs) to offer affordable, minimum value health insurance coverage to their full-time employees or pay a penalty. These rules apply to employers with at least 50 full-time employees during the preceding calendar year.
* The employer shared responsibility rules are also known as the “employer mandate” or the “pay or play” rules.
* An ALE may be penalized if one or more full-time employees obtain a subsidy through the healthcare exchange because the employer did not offer health coverage, or the coverage offered is not affordable or does not provide minimum value.

### Executive Order Issued on January 20, 2017

* Donald Trump signed an [executive order](https://www.whitehouse.gov/the-press-office/2017/01/2/executive-order-minimizing-economic-burden-patient-protection-and) to minimize the economic burden of the ACA until the law can be repealed and replaced.
* The order appeared to be more of a mission statement for the President’s administration going forward, as it did not provide specific guidance related to any particular provision or requirement of the ACA.
* Nevertheless, the executive order got the attention of business owners who began to wonder if the employer mandate would go away, along with any associated penalties.
* However, only Congress can make changes to the ACA, i.e. through the legislative process. The President is not empowered to alter legislation.

### IRS Response

* On April 14, 2017, the Office of Chief Counsel within the IRS issued Letter numbers [2017-0010](https://www.irs.gov/pub/irs-wd/17-0010.pdf) and [2017-0013](https://www.irs.gov/pub/irs-wd/17-0013.pdf) to clarify the impact (or lack of impact) of the executive order on the employer mandate rule.
* The letters were intended to clear up any confusion over the President’s executive order which directed the Department of Health and Human Services and other federal agencies to “waive, delay, or grant exemptions from ACA requirements that may impose a financial burden”.
* These letters confirmed that the pay or play rules continue to apply. Taxpayers must still adhere to the ACA requirements, including paying any penalties they may owe. That said, employers would be wise to revisit the status of their own health insurance offerings at this time, to ensure they are ACA compliant and to eliminate any concern over possible penalties for failure to comply.

### What Do We Do Now?

* For now, we should operate as we did with the previous administration and under the rules of the ACA.
* The result is that the ACA is still in effect. Until new healthcare legislation is enacted, the IRS has confirmed that the ACA is still in effect and ALEs must continue to comply with the employer shared responsibility rule as well as any other reporting requirements.

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