

COMPLIANCE ALERT



IRS Significantly Decreases ACA Employer Mandate Affordability Percentage for 2023

August 3, 2022

Action Required:

- Review planned 2023 medical coverage offers.
- Determine if they meet the ACA's minimum standards and affordability requirements.
- Assess and calculate any potential penalties that may be imposed.

The IRS has announced that the new affordability percentage for 2023 will be 9.12%. This is the most substantial decrease in this percentage since these rules went into effect.

The new, substantially reduced affordability percentage could potentially result in more employers and plan sponsors receiving penalty assessments from the IRS if they fail to properly adjust their employee premium contribution requirements for 2023.

The new affordability percentage for 2023 will go into effect for plan years beginning on or after January 1, 2023.

How will the new Affordability Percentage Impact Employers and Plan Sponsors?

Employers will likely have to substantially lower their required employee contributions for 2023 to meet the adjusted affordability percentage (likely more than they initially planned).

What Should Employers and Plan Sponsors Do Next?

As open enrollment season is just around the corner for most plans, employers and plan sponsors should begin the process of reviewing their planned 2023 offers of medical coverage, determine if they meet the ACA's minimum standards and affordability requirements, and assess and calculate any potential penalties that may be imposed. ■

↓ Full Explanation Follows ↓

IRS Significantly Decreases ACA Employer Mandate Affordability Percentage for 2023

On August 1, 2022, the IRS announced in [Revenue Procedure 2022-34](#) that the new affordability percentage for 2023 will be 9.12%. This significant decrease (reduced from the 9.61% affordability percentage used for 2022) is the most substantial decrease in this percentage since these rules first went into effect.

The new, substantially reduced affordability percentage could potentially result in more employers and plan sponsors receiving penalty assessments from the IRS if they fail to properly adjust their employee premium contribution requirements for 2023.

How Will the New Affordability Percentage Impact Employers and Plan Sponsors?

Given that the new, substantially reduced affordability percentage is the most significant decrease in this percentage since these rules went into effect, employers will likely have to substantially lower their required employee contributions for 2023 to meet the adjusted affordability percentage (likely more than they initially planned).

As background, this affordability percentage is used for determining if the coverage an employer offers is affordable under one of three Employer Mandate affordability safe harbors. Specifically, for 2023, an employer's offer of medical coverage will be deemed to be affordable for purposes of the Employer Mandate penalty rules only if the required employee contribution for the lowest cost "self-only" or "employee-only" tier option offered by the employer does not exceed 9.12% of the applicable safe harbor amount. The three safe harbors that measure affordability are based on an employee's Form W-2 wages, an employee's rate of pay or the federal poverty line for a single individual.

What Are the Projected Employer Mandate Penalty Amounts for 2023?

Although not yet released, the ACA Employer Shared Responsibility ("Employer Mandate") penalty amounts for failing to offer coverage (the "large penalty"), and for failing to offer coverage that meets the ACA's minimum standards and affordability requirements (the "small penalty"), can be projected using prior years' calculation methods. The Employer Mandate penalty amounts for 2023 have been projected as follows:

For the "large penalty" for failing to offer Minimum Essential Coverage to at least 95% of the ACA-defined "full-time employees" and their dependent children (under Code § 4980H(a)), the penalty is projected to be \$2,880 (up from \$2,750 in 2022); and

For the "small penalty" for failing to offer coverage that meets the ACA's minimum standards of minimum value and affordability (under Code § 4980H(b)), the penalty is projected to be \$4,320 (up from \$4,120 in 2022).

The large penalty, if applicable, is multiplied by every full-time employee in the organization (minus the first 30 employees) if a single employee qualifies for and receives a premium tax credit on an ACA Exchange. The small penalty, if applicable, is applied on a per-employee basis for each full-time employee that qualifies for and receives a premium tax credit on an ACA Exchange.

When Does the New Affordability Percentage Go into Effect?

The new affordability percentage for 2023 will go into effect for plan years beginning in the 2023 calendar year (that is, plan years beginning on or after January 1, 2023).

What Should Employers and Plan Sponsors Do Next?

As open enrollment season is just around the corner (for most plans), employers and plan sponsors should begin the process of reviewing their planned 2023 offers of medical coverage, determine if they meet the ACA's minimum standards and affordability requirements, and assess and calculate any potential penalties that may be imposed. If your organization needs assistance with understanding the ACA's Employer Mandate rules, or with calculating whether your offer of medical coverage will be affordable for 2023, please contact your Account Manager. ■