UBA
ACA Advisor

What you need to know about the Affordable Care Act

The ACA and the Individual Shared Responsibility Requirement

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General Information

The individual responsibility requirement (also known as the individual mandate) became effective for most people as of January 1, 2014. During the individual mandate's first few years, most people residing in the U.S. were required to have minimum essential coverage (MEC) or pay a penalty.

Currently, many individuals are eligible for financial assistance through premium tax credits (also known as premium subsidies) to help them purchase coverage through the health insurance Marketplace (also known as the Exchange).

Although employers are not required to educate employees about their individual responsibilities under the Patient Protection and Affordable Care Act (ACA), this Advisor provides information that employers may find helpful to know.

For 2014, the penalty for an adult was the greater of $95 or 1 percent of household income above the tax filing threshold. For 2015, the penalty was the greater of $325 or 2 percent of income above the tax filing threshold. For 2016, the penalty was the greater of $695 or 2 percent of income above the tax filing threshold. For 2017 and 2018, the penalty was the greater of $695 or 2.5 percent of income above the tax filing threshold.

The penalty for a child under age 18 was 50 percent of the adult penalty. The maximum penalty per family was three times the individual penalty. The penalty was calculated and paid as part of the employee's federal income tax filing.

On December 22, 2017, the Tax Cuts and Jobs Act (Act) reduced the penalty associated with the individual shared responsibility provision to $0, effective in 2019. This means that although most people are required under the ACA to have MEC, a person isn't subject to a penalty for failing to have MEC starting in 2019.

Minimum Essential Coverage

To avoid a penalty before 2019, a person must have "minimum essential coverage." Minimum essential coverage is basic medical coverage and may be provided through an employer, Medicare, Medicaid, CHIP, TRICARE, some VA programs, or an individual policy (through or outside the Marketplace). Acceptable employer coverage includes both insured and self-funded PPO, HMO, HDHP, and fee-for-service plans, as well as grandfathered coverage, COBRA, retiree medical, and health reimbursement arrangements (HRAs). It does not matter whether the coverage is provided directly by the employer or through another party, such as a multiemployer plan, a collectively bargained plan, a PEO, or a staffing agency.

Exempt Individuals

Before 2019, while most people were required to obtain coverage or pay penalties, individuals were not penalized if they did not obtain coverage and:

- They did not have access to affordable coverage (cost exceeded 8 percent (indexed) of modified adjusted gross household income)
- Their household income was below the tax filing threshold
- They met hardship criteria (such as recent bankruptcy, homelessness, unreimbursed expenses from natural disasters)
- Their period without coverage was less than three consecutive months
- They lived outside the U.S. long enough to qualify for the foreign earned income exclusion
- They resided in a U.S. territory for at least 183 days during the year
- They were a member of a Native American Tribe
- They belonged to a religious group that objects to having insurance, including Medicare and Social Security, on religious grounds (e.g., Amish)
- They belonged to a health sharing ministry that has been in existence since 1999
- They were incarcerated (unless awaiting trial or sentencing)
- They were illegal aliens

If the person has access to employer-provided coverage as either the employee or an eligible dependent, affordability of the employer-provided coverage is the only factor considered for purposes of the individual mandate.

- For the employee, coverage is unaffordable (so no penalty applied for failure to have coverage) if the cost of single coverage is more than 8 percent (indexed) of household income.
- For a dependent, coverage is unaffordable (so no penalty applied for failure to have coverage) if the cost of the least expensive employer-provided dependent coverage is more than 8 percent (indexed) of household income.
- If the employee and spouse both have access to coverage through their own employers, the cost for each person's coverage is based on the cost of his or her own single coverage, but the totals are then combined to see if the total cost exceeds 8 percent (indexed) of household income.

This meant that there were situations in which an employee had to pay a penalty, but family members do not. It also meant that while a low-income person could have chosen not to purchase coverage (and pay no penalty), he or she also had the option to purchase through the Marketplace and receive a premium subsidy.

An individual who is exempt from the individual mandate because he or she does not have affordable coverage available also has the option to purchase catastrophic coverage. Premium subsidies are not available for catastrophic coverage.

If a person does not have access to employer (or other non-Marketplace) coverage, the measure of unaffordability is the person's premium after the premium subsidy is applied to the lowest cost bronze plan available through the Marketplace.

Eligibility for Premium Subsidies

To help lower-income people meet the requirement to have insurance, a premium subsidy will be available to a person who:

- Purchases coverage through a public Marketplace; and
- Has a household modified adjusted gross income between 100 percent or 133 percent (depending on the person's state) and 400 percent of Federal Poverty Level (FPL); and
- Is not eligible for minimum essential medical coverage through a government program such as Medicare, Medicaid, or CHIP; and
- Is not eligible for employer-provided coverage that both is minimum value (is expected to cover at least 60 percent of claims) and affordable (the cost of **single** coverage is not more than 9.5 percent (indexed) of household income; this means that dependents are not eligible for a premium subsidy if the cost of employee-only coverage is affordable and they are eligible for the employer-provided coverage, even if the cost of family coverage exceeds 9.5 percent (indexed) of income).

Additional requirements to be eligible for the premium subsidy are that the person:

- Is a U.S. citizen, national or alien lawfully present in the U.S. (e.g., on a visa)
- Is not eligible to be claimed as another person's tax dependent
- Files a tax return (if married, a joint return must be filed)
- Does not have employer-provided minimum essential coverage, including an HRA with a balance (regardless of whether it is affordable and minimum value)

The amount of available premium subsidy depends on the person's household income. The percentage of income a person will be expected to pay for coverage ranges from 2 percent (indexed) for someone whose income is 100 percent to 133 percent of FPL to 9.5 percent (indexed) for someone whose income is 300 percent to 400 percent of FPL. Basically, the Marketplace will look at how much a specific silver (70 percent value) plan costs in the Marketplace and determine how much of that cost the person should pay based on their income. The person will directly pay his or her share to the insurer and the government will pay the rest directly to the insurer.

The government payment of the premium subsidies is considered an advance tax credit, so when the person files his or her federal income tax return after the end of the year there will be a true-up using IRS

Form 8962, and the employee will pay extra tax (to a maximum) or get money back if the monthly subsidies/credits were too large or too small.

Individuals with incomes below 250 percent of FPL will also be eligible for help with deductibles, coinsurance, and co-pays.

A person who applies for a premium subsidy will be required to provide information about coverage available through sources other than the Marketplace as part of the application process. If the person says that coverage is available through the person's employer (or his or her spouse's employer), the Marketplace will contact the employer to verify that the employee's information is accurate. Employers will be encouraged, but not required, to respond to these verification requests. Income will be verified through tax filings. Equifax will be used to obtain current income information if that is needed. The IRS has the right to audit both the employer and individual.

Note: The ACA defines "affordability" differently based on the situation. Affordability for purposes of the individual responsibility requirement is based on 8 percent (indexed) of household income; affordability for purposes of the premium subsidy is based on 9.5 percent (indexed) of household income; and affordability for purposes of the employer shared responsibility requirement is based on 9.5 percent (indexed) of the employee's safe harbor income for self-only coverage.

The IRS has issued an FAQ about the individual mandate: Questions and Answers on the Individual Shared Responsibility Provision

A Fact Sheet is also available: The Individual Shared Responsibility Provision

Noteworthy Numbers and Other Details

For 2019, the tax filing threshold is $12,200 if filing single (under 65) and $24,400 if married and filing jointly (both spouses under 65).

For 2019, the Federal Poverty Level (FPL) in the 48 contiguous states and the District of Columbia is $12,490 for a household size of one and $25,750 for a household of four. It is $15,600/$32,190 in Alaska and $14,380/$29,620 in Hawaii.

The subsidy is based on the following table (a sliding scale applies in a linear manner, rounded to the nearest one-hundredth of one percent between the minimum and maximum percentage). The applicable percentages are indexed each year.

Household income as a percent of FPL	Applicable Percentage	
	Minimum	Maximum
Up to 133%	2.0	2.0
133% - 150%	3.0	4.0
150% - 200%	4.0	6.3
200% - 250%	6.3	8.05
250% - 300%	8.05	9.5
300% - 400%	9.5	9.5

The applicable percentage multiplied by the person's household income determines the person's required share of premiums for the second least expensive silver plan in the Marketplace.

Household income generally includes the income of all individuals in the tax household (e.g., the income of employed children is considered unless the child files his or her own tax return).

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