



Important 2023 ACA Reminders for Applicable Large Employers

Sept. 2, 2022

The Affordable Care Act (ACA) includes numerous requirements for applicable large employers (ALEs) to meet to maintain compliant group health plans. Many of these requirements change annually, so we provide you this overview of the key facts and figures to keep in mind for 2023.

Affordability Threshold

The ACA imposes an employer shared responsibility payment (ESRP) on any ALE that offers qualifying coverage to its full-time employees but for which the employee share of the cost for the lowest tier self-only coverage option is deemed to be unaffordable. The ACA bases affordability on an employee's household income and indexes the percentage annually for inflation. For 2023, the affordability threshold is 9.12% – a drop from 2022. ALEs preparing for 2023 should be aware that this drop will affect how much they can charge employees for health coverage and still avoid an ESRP.

Affordability Safe Harbors

An ALE typically will not know an employee's overall household income, so federal regulators created three safe harbors an ALE may use to judge whether an offer of coverage is affordable.

- The *W-2 Safe Harbor* generally is based on the wages paid to the employee that the employer reports in Box 1 of that employee's Form W-2.
- The *Rate of Pay Safe Harbor* generally is based on an employee's rate of pay at the beginning of the coverage period, with adjustments permitted for an hourly employee, if the rate of pay is decreased (but not if the rate of pay is increased).

- The *Federal Poverty Line Safe Harbor* generally treats coverage as affordable for a month if an employee's required contribution for the month does not exceed 9.5%, adjusted annually, of the federal poverty line (FPL) for a single individual for the applicable calendar year, divided by 12. Note that the government typically does not release the FPL table until after the calendar year starts. So, the rules allow many employers (including any who sponsor a calendar year plan) to use the FPL table published within the six months prior to the start of the plan year. Thus, the maximum employee contribution for lowest tier self only coverage for ALEs with plan years starting before July 2023 (including calendar year plans) will be \$103.28.

ESRP Penalty Amounts

Each year the IRS announces the inflation-adjusted amounts that it will assess against any ALE that either fails to make an offer of group health coverage to at least 95% of its full-time employees (the so-called "A" penalty) or makes an offer of coverage that is either unaffordable or does not meet the ACA's minimum value standard (the so-called "B" penalty). For 2023, the A penalty is \$2,880 (\$240/month), and the B penalty is \$4,320 (\$360/month).

ALE Form 1094-C/1095-C Deadlines

ALEs must annually issue individual statements (generally copies of Form 1095-C) and file Forms 1094-C and 1095-C with IRS to disclose certain information about the group health coverage they offer their full-time employees. For the 2022 reporting cycle, ALEs must furnish individual statements to full-time employees no later than March 2, 2023. ALEs must file applicable reports with the IRS no later than February 28, 2023, if filing by paper, or no later than March 31, 2023, if filing electronically (which is mandatory for ALEs required to file more than 250 W-2s in the prior calendar year).

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