



COMPLIANCE ALERT



EMPLOYEE BENEFITS | JUNE 13, 2018

IRS Issues Affordability Percentage Adjustment for 2019

In [Rev. Proc. 2018-34](#), the IRS released the inflation adjusted amounts for 2019 relevant to determining whether employer-sponsored coverage is “affordable” for purposes of the Affordable Care Act’s (“ACA’s”) employer shared responsibility provisions and premium tax credit program. As shown in the table below, for plan years beginning in 2019, the affordability percentage is **9.86%** of an employee’s household income or applicable safe harbor.

Code Section	4980H(a)	4980H(b)	36B(3)(A)(i)
Description	Potential annual penalty for failure to offer coverage to at least 95% (70% in 2015) of full-time employees (calculated per full-time employee, minus 30 (80 in 2015)) ¹	Potential annual penalty if coverage is offered but is not affordable or does not provide minimum value (calculated per full-time employee who receives a subsidy) ²	Premium credits and affordability safe harbors Section 4980H penalties may be triggered by a full-time employee receiving a PTC
2019	\$2,500*	\$3,750	9.86%
2018	\$2,320	\$3,480	9.56%
2017	\$2,260	\$3,390	9.69%
2016	\$2,160	\$3,240	9.66%
2015	\$2,080	\$3,120	9.56%
2014**	\$2,000	\$3,000	9.50%

* Estimated based on premium adjustment percentage in the 2019 [Notice of Benefit and Payment Parameters](#)

**No employer shared responsibility penalties were assessed for 2014.

Under the ACA, applicable large employers (ALEs) – generally those with 50 or more full-time equivalent employees on average in the prior calendar year – must offer affordable health insurance to full-time employees to avoid an employer shared responsibility payment. Coverage is “affordable” if the employee’s required contribution for self-only coverage under the employer’s lowest-cost minimum value plan does not exceed 9.5% (as indexed) of the employee’s household income for the year. In lieu of household income, employers may rely on one or more of the following safe harbor alternatives when assessing whether coverage is affordable: W-2, Rate of Pay, and Federal Poverty Level. Each of the three safe harbors refers back to the 9.86% figure in 2019.

The ACA also provides a premium tax credit to assist individuals paying for health coverage in the public marketplace. An individual offered affordable employer-sponsored coverage is generally ineligible for the premium tax credit. Accordingly, for plan years starting in 2019, if a full-time employee’s required contribution for self-only coverage offered by the employer is more than 9.86% of his or her household income (or applicable safe harbor), the coverage will not be considered affordable for that employee and the employer may be liable for an employer

¹ The “A” penalty applies when an ALE fails to offer coverage to at least 95% of its full-time employees (and their children up to age 26) and at least one full-time employee receives a premium credit for marketplace coverage. The requirement is only to offer coverage – no employer contribution or minimum plan design is necessary to avoid the penalty.

² The “B” penalty applies when the ALE offers coverage to 95% of its full-time employees (and their children up to age 26), but the coverage is either not affordable or does not provide minimum value, and at least one full-time employee receives a premium credit.

shared responsibility payment if the employee obtains a premium tax credit.

Note that beginning January 1, 2019, under the Tax Cuts and Jobs Act, the individual mandate penalty imposed on individual taxpayers for failure to have qualifying health coverage was reduced to \$0, effectively repealing the individual mandate. However, despite repeated efforts by the Trump Administration and Congress, the employer mandate has not been repealed and the IRS has begun enforcing the employer mandate by sending Letter 226-J for 2015 informing employers of a potential employer shared responsibility payment. While there continue to be calls to suspend the assessment and repeal the employer mandate, including most recently a [letter](#) by industry groups to Treasury and the U.S. Department of Health and Human Services, to date, enforcement has not ceased and the employer mandate remains the law of the land.

Next Steps for Employers

Applicable large employers should be mindful of the updated affordability percentage for plan years beginning in 2019. Given that the affordability percentage has increased significantly from 9.56% to 9.86%, employers should have additional flexibility when setting “affordable” employee contributions.

This alert was prepared for Woodruff Sawyer by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on the Affordable Care Act. Contact Peter Marathas or Stacy Barrow at pmarathas@marbarlaw.com or sbarrow@marbarlaw.com.

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