COMPLIANCE ALERT

EMPLOYEE BENEFITS | August 10, 2022

IRS Issues Affordability Percentage Adjustment for 2023

The Internal Revenue Service (IRS) has released Rev. Proc. 2022-34, which contains the inflation-adjusted amounts for 2023 that are used to determine whether employer-sponsored coverage is “affordable” for purposes of the Affordable Care Act’s (ACA) employer shared responsibility provisions and premium tax credit program. As shown in the table below, for plan years beginning in 2023, the affordability percentage for employer mandate purposes is indexed to **9.12%**. This is a significant decrease from 2022 and the lowest affordability threshold since the Affordable Care Act was implemented. Employer shared responsibility payments are also indexed.

Code Section	4980H(a)	4980H(b)	36B(b)(3)(A)(i)
Description	Coverage not offered to 95% of (or all but 5) full-time employees	Coverage offered, but unaffordable or is not minimum value	Premium credits and affordability safe harbors
2023*	$2,880	$4,320	9.12%
2022	$2,750	$4,120	9.61%
2021	$2,700	$4,060	9.83%
2020	$2,570	$3,860	9.78%
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%

*Section 4980H(a) and (b) penalties for 2023 are projected.
**No employer shared responsibility penalties were assessed for 2014.

Under the ACA, applicable large employers (ALEs) must offer affordable health insurance coverage to full-time employees. If the ALE does not offer affordable coverage, it may be subject to an employer shared responsibility payment. An ALE is an employer that employed 50 or more full-time equivalent employees on average in the prior calendar year. Coverage is considered affordable if the employee’s required contribution for self-only coverage on the employer’s lowest-cost, minimum value plan does not exceed 9.12% of the employee’s household income in 2023 (prior years shown above).
An ALE may rely on one or more safe harbors in determining if coverage is affordable: W-2, rate of pay, and federal poverty level.

If the employer’s coverage is not affordable under one of the safe harbors and a full-time employee is approved for a premium tax credit for Marketplace coverage, the employer may be subject to an employer shared responsibility payment. Since 2019, the individual mandate penalty imposed on individual taxpayers for failure to have qualifying health coverage was reduced to $0 under the Tax Cuts and Jobs Act, effectively repealing the federal individual mandate. A previous lawsuit challenging the constitutionality of the ACA due to this change to the individual mandate penalty was unsuccessful. The employer mandate has not been repealed and the IRS continues to enforce it through Letter 226J. The IRS is currently enforcing employer shared responsibility payments for tax years 2019 and 2020.

Next Steps for Employers

This is a significant adjustment in the affordability threshold. Applicable large employers should be aware of the updated, reduced affordability percentage for plan years beginning in 2023, and should consider it along with all other relevant factors when setting contributions.

This alert was prepared for Woodruff Sawyer by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on ERISA-governed and non-ERISA-governed retirement and welfare plans, executive compensation, and employment law. Contact Stacy Barrow or Nicole Quinn-Gato at sbarrow@marbarlaw.com or nquinngato@marbarlaw.com.