National Compliance Update
USI EMPLOYEE BENEFITS

August 24, 2023

IRS Announces 2024 ACA Affordability Indexed Amount

The IRS recently announced in Revenue Procedure 2023-29 that the Affordable Care Act ("ACA") affordability indexed amount under the Employer Shared Responsibility Payment ("ESRP") requirements will be **8.39%** for plan years that begin in 2024. This is a significant decrease from the 2023 percentage amount (9.12%), and again below the original 9.5% threshold.[1]

> ***USI Note***. It will be important to evaluate contribution tiers for 2024 plan years for affordability because of this decrease in the required contribution percentage.

BACKGROUND

Rev. Proc. 2023-29 establishes the indexed "required contribution percentage" used to determine whether an individual is eligible for "affordable" employer-sponsored health coverage under Section 36B (related to qualification for premium tax credits when buying ACA Marketplace coverage). However, the IRS explained in IRS Notice 2015-87[2] that a percentage change under Section 36B will correspond to a similar change for affordability under section 4980H ESRP requirements.

DETERMINING AFFORDABILITY IN 2024

An employer will not be subject to a penalty[3] with respect to an ACA full-time employee ("FTE") if that employee's required contribution for 2024 meets one of the following safe harbors.

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[1] Indexed at 9.78% in 2020; 9.83%, 2021; 9.61%, 2022, 9.12%, 2023, 8.39%, 2024.

[2] https://www.irs.gov/pub/irs-drop/n-15-87.pdf (Q&A 12)

[3] Employer Penalties (generally effective the first day of the 2015 plan year)

- "A" (or "No Coverage") Penalty
  - Applies if the large employer does not offer at least 95% of all FTEs and their dependents minimum essential coverage and one FTE receives a subsidy in the Marketplace.
  - $2,000 (as indexed) X total number of FTEs in excess of 30.
  - Indexed at $2,880 for 2023 ($240 per month); $2,970 for 2024 ($247.50 per month).
- "B" (or "Offer Coverage") Penalty
  - Applies if the large employer offers coverage to at least 95% of all FTEs (and their dependents), but that coverage is unaffordable or does not provide minimum value (or as to any excluded FTEs of 5% or less of all FTEs) and one FTE receives a subsidy in the Marketplace.

This summary is intended to convey general information and is not an exhaustive analysis. This information is subject to change as guidance develops. USI does not provide legal or tax advice. For advice specific to your situation, please consult an attorney or other professional.

1. **The W-2 safe harbor.**

   The employee's monthly contribution amount for the self-only premium of the employer's lowest cost coverage that provides minimum value is affordable if it is equal to or lower than **8.39% of the employee's W-2 wages** (as reported on Box 1 of Form W-2). Application is determined after the end of the calendar year and on an employee-by-employee basis. Box 1 reflects compensation subject for federal income taxes, which would exclude amounts such as employee contributions to a 401(k) or 403(b) plan, and towards other benefits through a cafeteria plan.

2. **Rate of pay safe harbor.**

   The employee's monthly contribution amount for the self-only premium of the employer's lowest cost coverage that provides minimum value is affordable if it is equal to or lower than **8.39% of the employee's computed monthly wages**. For hourly employees, monthly wages are equal to 130 hours multiplied by their rate of pay. For salaried employees, monthly wages are equal to their monthly salary.

   > ***USI Note***. For example, an hourly employee has a $10/hour rate of pay. For a 2024 plan year, coverage is "affordable" for the employee if the employee's cost for self-only coverage does not exceed $109.07/month (($10 x 130 hours) x .0839).[4]

3. **Federal Poverty Level ("FPL") safe harbor.**

   Coverage is affordable if it does not exceed **8.39% of the FPL**.

   For a 2024 calendar year plan, coverage is affordable under the FPL safe harbor if the employee monthly cost for self-only coverage in the lowest cost plan that provides minimum value is not more than **$101.93** (48 contiguous states), $127.31 (Alaska), or $117.25 (Hawaii). Note, this amount may increase (or decrease) when the 2024 FPL guidelines are issued.[5]

EMPLOYER NEXT STEPS

Employers budgeting and preparing for the 2024 plan year should review these affordability safe harbors when analyzing employee contribution amounts for the coming year.

For Revenue Procedure 2023-29, please visit: https://www.irs.gov/pub/irs-drop/rp-23-29.pdf.

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– $3,000 (as indexed) X the total number of FTEs who receive the government subsidy in the Marketplace (maximum penalty is the "A" penalty).
– Indexed at $4,320 for 2023 ($360 per month); $4,460 for 2024 ($371.67 per month).

[4] This is measured based on the cost for self-only coverage in the lowest cost plan option that provides a minimum value offered to the employee.

[5] The Department of Health and Human Services generally issues the FPL guidelines for a calendar year in January of the applicable year (e.g., issued in January 2024 for calendar year 2024). For planning purposes, an employer may use the FPL guidelines in effect 6 months prior to the start of the plan year (for a plan year beginning January 1, 2024, this equates to 8.39% times $14,580 for the 48 contiguous states and the District of Columbia, $18,210 for Alaska, or $16,770 for Hawaii). Assuming the 2024 guidelines are issued and in effect in January 2024, plan years that begin on February 1, 2024, but before July 1, 2024, may use either the 2023 or 2024 FPL guidelines to determine affordability under the FPL safe harbor.

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