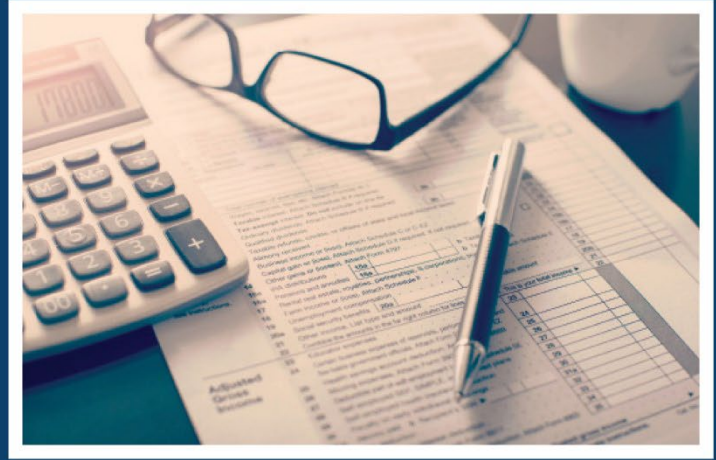


ACA AFFORDABILITY PERCENTAGE DECREASES FOR 2023

AUGUST 2022



On Aug. 1, 2022, the IRS issued [Revenue Procedure \(Rev. Proc.\) 2022-34](#) to index the contribution percentages in 2023 for determining the affordability of an employer's plan under the Affordable Care Act (ACA).

For plan years beginning in 2023, employer-sponsored coverage will be considered affordable if the employee's required contribution for self-only coverage does not exceed **9.12%** of the employee's household income for the year for purposes of both the pay or play rules and premium tax credit eligibility.

This is the most substantial decrease in this percentage since these rules were implemented (down from 9.61% in 2022). It is the lowest that this percentage has ever been set. As a result, some employers may have to lower their employee contribution for 2023 to meet the adjusted percentage.

Employer Shared Responsibility Rules

Under the ACA, employees (and their family members) who are eligible for coverage under an affordable employer-sponsored plan are generally not eligible for the premium tax credit. This is significant because the ACA's employer share responsibility penalty for ALEs is triggered when a full-time employee receives a premium tax credit for coverage under an Exchange plan.

To determine an employee's eligibility for a tax credit, the ACA provides that employer-sponsored coverage is considered affordable if the employee's required contribution for self-only coverage does not exceed a certain percentage of the employee's household income for the tax year, adjusted annually to reflect the excess of the rate of premium growth.

The ACA's employer shared responsibility or pay or play rules require ALEs to offer affordable, minimum value health coverage to their full-time employees (and dependents) or pay a penalty. The affordability of health coverage is a key point in determining whether an ALE will be subject to a penalty.

These rules generally determine the affordability of employer-sponsored coverage by reference to the rules for determining premium tax credit eligibility. For 2023, Rev. Proc. 22-34 **significantly decreases the affordability contribution percentage to 9.12%**. This means that employer-sponsored coverage for the 2023 plan year will be considered affordable under the employer shared responsibility rules if the employee's required contribution for self-only coverage does not exceed **9.12%** of the employee's household income for the tax year.

Employers may use an affordability safe harbor to measure the affordability of their coverage. The three safe harbors that measure affordability are based on **Form W-2 wages** from that employer, the employee's **rate of pay** or the **federal poverty line (FPL)** for a single individual.

The affordability test applies only to the portion of the annual premiums for **self-only coverage** and does not include any additional cost for family coverage. Also, if an employer offers multiple health coverage options, the affordability test applies to the **lowest-cost option** that also satisfies the minimum value requirement.

Form W-2 Safe Harbor

Under the Form W-2 safe harbor, an ALE may determine the affordability of its health coverage by reference **only to an employee's wages from that ALE**, instead of by reference to the employee's household income. For this purpose, "wages" is the amount that is required to be reported in **Box 1** of the employee's Form W-2.

An ALE satisfies the Form W-2 safe harbor with respect to an employee if the employee's required contribution for the calendar year for the ALE's lowest cost self-only coverage that provides minimum value during the entire calendar year (excluding COBRA or other continuation coverage except with respect to an active employee eligible for continuation coverage) **does not exceed 9.12% of that employee's Form W-2 wages** from the employer for the calendar year.

-Eligibility for the Form W-2 Safe Harbor

To be eligible for the Form W-2 safe harbor, the employee's required contribution must remain a consistent amount or percentage of all Form W-2 wages during the calendar year (or during the plan year for plans with non-calendar year plan years). Thus, an ALE may not make discretionary adjustments to the required employee contribution for a pay period. A periodic contribution that is based on a consistent percentage of all Form W-2 wages may be subject to a dollar limit specified by the employer.

-Timing of the Form W-2 Safe Harbor

ALEs determine whether the Form W-2 safe harbor applies after the end of the calendar year and on an employee-by-employee basis, taking into account W-2 wages and employee contributions.

-Partial-year Offers of Coverage

For an employee who was not offered coverage for an entire calendar year, the Form W-2 safe harbor is applied by:

- Adjusting the employee's Form W-2 wages to reflect the period when the employee was offered coverage; and
- Comparing the adjusted wage amount to the employee's share of the premium for the employer's lowest cost self-only coverage that provides minimum value for the periods when coverage was offered.

Specifically, the amount of the employee's compensation for purposes of the Form W-2 safe harbor is determined by multiplying the wages for the calendar year by a fraction equal to the number of calendar months for which coverage was offered over the number of calendar months in the employee's period of employment with the ALE during the calendar year. For this purpose, if coverage is offered during at least one day during the calendar month, or the employee is employed for at least one day during the calendar month, the entire calendar month is counted in determining the applicable fraction.

Rate of Pay Safe Harbor

The rate of pay safe harbor was designed to allow ALEs to prospectively satisfy affordability without the need to analyze every employee's wages and hours. **For hourly employees**, the rate of pay safe harbor allows an ALE to:

- Take the lower of the hourly employee's rate of pay as of the first day of the coverage period (generally, the first day of the plan year) or the employee's lowest hourly rate of pay during the calendar month;
- Multiply that rate by 130 hours per month (the benchmark for full-time status for a month); and
- Determine affordability for the calendar month based on the resulting monthly wage amount.

Specifically, the employee's monthly contribution amount (for the self-only premium of the employer's lowest cost coverage that provides minimum value) is affordable for a calendar month if it is equal to or lower than **9.12% of the computed monthly wages** (that is, the employee's applicable hourly rate of pay multiplied by 130 hours). The final regulations, unlike the proposed regulations, allow an ALE to use the rate of pay safe harbor even if an hourly employee's rate of pay is reduced during the year.

For salaried employees, monthly salary as of the first day of the coverage period would be used, instead of hourly salary multiplied by 130 hours. However, if the monthly salary is reduced, including due to a reduction in work hours, the rate of pay safe harbor may not be used.

Federal Poverty Line Safe Harbor

An ALE may also rely on a design-based safe harbor using the federal poverty line (FPL) for a single individual. Employer-provided coverage is considered affordable under the FPL safe harbor if the employee's required contribution for the calendar month for the lowest cost self-only coverage that provides minimum value does not exceed **9.12% (as adjusted) of the FPL for a single individual** for the applicable calendar year, divided by 12.

ALEs may use any of the poverty guidelines in effect within six months before the first day of the plan year for purposes of this safe harbor. For reference, the last published 2022 FPL for a single individual of \$13,590 would result in a maximum employee contribution of \$103.28 to be considered affordable under the FPL safe harbor ($9.12\% \times \$13,590/12$).

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