ACA UPDATE: Employer Shared Responsibility Affordability – 2019

On May 21, 2018, the Internal Revenue Service (IRS) issued Revenue Procedure 2018-34. In this document, the IRS effectively increased the affordability calculation for large employers from 9.56% (2018) to 9.86% for 2019. This is the largest increase for the affordability calculation since the large employer shared responsibility requirements became effective in 2014. This increase will mean that the thresholds for affordable coverage will be higher than in past years.

As a reminder, the Affordable Care Act (ACA) Shared Responsibility Provisions require large employers to offer health coverage to full-time employees that meet certain standards in order to avoid penalties:

1. Offer Minimum Essential Coverage to at least 95% of Full-Time employees; and
2. Offer Affordable and Valuable Coverage to all Full-Time employees

In order to manage to penalty #2, large employers must be mindful of the two requirements:

Valuable: This requirement takes into account the cost sharing provisions and coverage under the plan. It does not include premium. The plan must cover 60% of the cost of benefits, or a “bronze” level plan. Employers can determine the value of their plans here.

Affordable: This requirement applies to the lowest cost single coverage option that the large employer offers. Originally, the requirement was to compare premium single contribution for such coverage to the employee’s household income. Due to the fact that the household income is not “readily available” to the employer, three safe harbors were provided to determine affordability. In general, in order for the large employer to avoid this penalty, Full-Time employees cannot be required to contribute more than 9.56% (2018); 9.86% (2019) of their wages toward the premium. To determine “wages”, the 3 safe harbors are:

1. **Box 1, W2**: employers calculate affordability based on the wages paid to the employee. Employers must use current year W2 wages (rather than from a prior year) which may be difficult to apply when making the offer of coverage at the beginning of the year rather than at the end when the W2 is generated.
2. **Rate of Pay**: For hourly employees, the wages are determined by multiplying the employee’s hourly rate x 130. For salaried employees, the wages are determined by the monthly salary. If a salaried employee’s monthly salary is reduced at any time during the year, this safe harbor cannot be used. The affordability calculation under this method is NOT altered by a leave of absence or reduction in hours worked. The employer can continue to use this safe harbor for hourly employees if the rate of pay is reduced during the coverage period, as long as the employer applies the safe harbor on a month by month basis. This method will not work for tipped employees or employees compensated on the basis of commissions.
3. **Federal Poverty Level**: Employers calculate affordability using the single federal poverty level for any given year. Coverage is treated as affordable if the premium contribution required does not exceed 9.56% (2018); 9.86% (2019) of the federal poverty level divided by 12. Employers are permitted to use the guidelines in effect six months prior to the beginning of the plan year to provide enough time to establish premium amounts in advance of open enrollment.

These safe harbors are all optional. Employers can choose to use one or more of the safe harbors for all employees or any reasonable category of employees, provided it is done on a consistent basis. Reasonable categories include specified job categories, salaried vs. hourly, geographic location and other bona fide business criteria.

**Key takeaway**: Large employers should take note that the affordability calculation will increase from 9.56% (2018) to 9.86% in 2019. This change will affect all offers of coverage that begins on or after January 1, 2019. While evaluating affordability, large employers should determine their acceptable level of risk while considering safe harbors for offers of health insurance for employees.

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