

2019 'Pay or Play' Affordability Percentage Set at 9.86%

– Introduction & Summary –

*Under the employer shared responsibility (“pay or play”) provisions of the Affordable Care Act, applicable large employers (ALEs) – generally those who had **50 or more full-time employees** (including full-time equivalent employees) – may be subject to a penalty if they do not offer **affordable coverage** that provides minimum value to their full-time employees and their dependents. **For plan years beginning in 2019**, the Internal Revenue Service has [announced](#) that coverage will generally be considered affordable if the employee’s required contribution for the lowest-cost, self-only health plan offered is **9.86% or less** of his or her household income for the taxable year. For plan years beginning in 2018, the applicable percentage is 9.56%.*

Affordable Coverage

Coverage is generally affordable for plan years beginning in 2018 if an employee’s **required contribution** for self-only coverage does not exceed **9.56%** of his or her household income for the taxable year. Coverage is generally affordable for plan years beginning in 2019 if an employee’s **required contribution** for self-only coverage does not exceed **9.86%** of his or her household income for the taxable year.

If an employer offers **multiple healthcare coverage options**, the affordability test applies to the lowest-cost self-only option available to the employee that also meets the minimum value requirement.

Affordability Safe Harbors

Because ALEs are not likely to know their employees’ household incomes, ALEs can take advantage of one or more of three **optional** affordability safe harbors. If an ALE meets the requirements of any of these safe harbors, the offer of coverage will be deemed affordable for purposes of pay or play. The three affordability safe harbors that can be used instead of household income in making the affordability determination are:

- **Form W-2 Wages Safe Harbor** – This is generally based on the amount of wages paid to the employee that are reported in Box 1.
- **Rate of Pay Safe Harbor** – This is generally based on the employee’s rate of pay at the beginning of the coverage period, with adjustments permitted, for an hourly employee, if the rate of pay is decreased (but not if the rate of pay is increased).
- **Federal Poverty Line Safe Harbor** – This generally treats coverage as affordable if the employee contribution for the year does not exceed a certain percentage of the federal poverty line for a single individual for the applicable calendar year. For 2018, the applicable percentage is 9.56%. For 2019, the applicable percentage is 9.86%.

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Note that an ALE may use one or more of the safe harbors above **only if** the ALE offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan that provides minimum value for the self-only coverage offered to the employee.

In addition, an employer may choose to use one or more of the safe harbors for all of its employees or for any **reasonable category of employees**, provided it does so on a uniform and consistent basis for all employees in a category.

Determining the Employee Required Contribution Amount

The employee required contribution includes amounts paid through salary reduction and takes into account the effects of employer arrangements such as health reimbursement arrangements (HRAs), wellness incentives, flex credits, and opt-out payments.

NOTE on Opt-Out Arrangements – The IRS has [stated](#) that until final regulations on opt-out arrangements are applicable, employers can rely on the opt-out arrangement guidance provided in IRS [Notice 2015-87](#) and a subsequent [proposed rule](#). That guidance generally provides that, **for purposes of pay or play, employers are not required to increase an employee’s required contribution by the amount of an opt-out payment as long as payment was not made as part of a “non-relief-eligible opt-out arrangement.”** In general, a non-relief-eligible opt-out arrangement is an unconditional opt-out arrangement (an arrangement providing payments conditioned solely on an employee declining coverage under employer-sponsored coverage and not on an employee satisfying any other meaningful requirement related to the provision of health care to employees, such as a requirement to provide proof of coverage through a plan of a spouse’s employer) adopted **after December 16, 2015**.

In addition, the **employee required contribution may not be the same amount as the premium the employee pays for coverage if**, for example:

- The employee chooses to enroll in more expensive coverage such as family coverage; or
- The employer, in addition to or in conjunction with the coverage, offers other arrangements that could affect the employee’s cost of coverage, including certain HRA contributions, wellness program incentives, flex credits, and opt-out payments.

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