AFFORDABILITY SAFE HARBOR Q&A

Overview

Coverage under an eligible employer-sponsored plan is deemed affordable for an employee if their required contribution (whether by salary reduction or otherwise) does not exceed a specified percentage of the employee's household income (9.12% for 2023; 8.39% for 2024).

> **Note:** "Required contribution" refers to the portion of an annual premium that would be paid by the individual (without regard to payment through salary reduction or otherwise) for self-only, minimum essential coverage.

The IRS permits three safe harbors that employers can use to assess affordability. Under these safe harbors, an employer can elect to determine affordability based on a criterion other than the employee's household income. Because household income is determined by reference to variables that are generally unknown to an employer (i.e., other sources of income for the employee, as well as income earned by the employee's spouse and dependents), employers may encounter practical difficulties and unpredictability in assessing whether the coverage they offer to employees is affordable.

What Are the Permitted Safe Harbors?

Form W-2

The W-2 safe harbor is determined after the end of the calendar year and on an employee-by-employee basis, taking the employee's annual W-2 wages (as reported in Box 1) into account and the employee contribution for the full calendar year for the employer's lowest-cost self-only coverage that provides minimum value.

> **Example:** An employer could determine whether it met the affordability safe harbor for 2023 for an employee by looking at that employee's W-2 wages for 2023 (as reported in Box 1) and comparing 9.5% (as indexed) of that amount to the employee's required 2023 contribution.

Rate of Pay

The rate of pay safe harbor provides applicable large employers (ALEs) with a design-based method for satisfying affordability without having to analyze each employee's wages and hours on a monthly basis.
Under this safe harbor, for an hourly employee, the employer uses an assumed rate of 130 hours per calendar month multiplied by an hourly employee's rate of pay, regardless of whether the employee actually works more or less than 130 hours during a calendar month. The affordability calculation under the rate of pay safe harbor is not altered by a leave of absence or reduction in hours worked.

> **Example:** If an hourly employee treated as a full-time employee earns $10 per hour in a calendar month (and earned at least $10 per hour as of the first day of the coverage period) but has one or more calendar months in which the employee has a significant amount of unpaid leave or otherwise reduced hours, the employer may still require an employee contribution of up to 9.5% (as indexed) of $10 multiplied by 130 hours ($123.50).

The final regulations permit an employer to apply the rate of pay safe harbor to an hourly employee even if the employee's rate of pay is reduced during the year. In this situation, the rate of pay is applied separately to each calendar month, rather than to the entire year, and the employee's required contribution may be treated as affordable if it is affordable based on the lowest rate of pay for the calendar month multiplied by 130 hours.

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An offer of coverage to a non-hourly employee is treated as affordable for a calendar month if the employee's required contribution for that month, for the lowest-cost, self-only coverage that provides minimum value, does not exceed 9.5% (as indexed) of the employee's monthly salary, as of the first day of the coverage period (instead of 130 multiplied by the hourly rate of pay); provided that if the monthly salary is reduced, including due to a reduction in work hours, the safe harbor is not available.

Federal Poverty Level (FPL)
Individuals with income below 100% of the federal poverty line are not eligible for a premium tax credit. Since receiving a premium tax credit is a precondition to an employer's penalty liability, by definition, an employee with income below 100% of the federal poverty line cannot trigger Code § 4980H(b) liability for an employer. Therefore, it is irrelevant whether employer-sponsored coverage is affordable to those employees. Accordingly, if an employer's offer of coverage is affordable to all employees who earn more than 100% of the federal poverty line, then the affordability standard is satisfied. This safe harbor is the easiest administratively to apply, since the employer has to do just one calculation and can ignore employees' actual wages (which, depending on fluctuations in hours or rates of pay, may cause problems under the other safe harbors).

How Are Safe Harbors Utilized for My District Employees?

Use of any safe harbors is optional, and an ALE member may choose to apply the safe harbors for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category. The regulations provide that reasonable categories for this purpose generally include specified job categories, nature of compensation (hourly or salary), geographic location, and similar bona fide business criteria. However, an enumeration of employees by name or pay rate would not be considered a reasonable category.

Example: the following table would constitute an appropriate assignment of affordability safe harbor method:

Employee Category	Employee Premium Contribution	Safe Harbor Method
Teachers	$0	FPL
Maintenance	$50	Rate of Pay
Transportation (Bus Drivers)	$60	Rate of Pay
Teacher Aides	$70	W-2

If a sub-group of employees within the category does not meet the assigned affordability threshold, that sub-group cannot be broken out with individual employees being assigned a separate safe harbor. The entire category would need to be assigned an appropriate affordability safe harbor method.

Which Affordability Safe Harbor Is SET SEG Using for My District?

For all SET SEG customers, the FPL safe harbor is first and foremost applied for any category of employees.

For hourly paid employees, SET SEG will use the lowest ray of pay submitted in the payroll file, whether the hours are attributed to their typical work schedule, on-call, training, etc.

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For salary paid employees, SET SEG will calculate a monthly salary rate at the beginning of the coverage year based on a 130-hour work month. Salary employees who receive a decrease in salary throughout the year will be assigned either W-2 or FPL safe harbor methods based on an appropriate employee categorization, such as job title, department, work location, etc.

In the table example on the previous page, assume 10 of the 25 employees in the Maintenance category are deemed unaffordable based on the rate of pay safe harbor. Without restructuring the Maintenance category into further sub-groups to eliminate the B Penalty affordability risk for those 10 employees, SET SEG will reassign the entire Maintenance category of 25 employees to the Form W-2 safe harbor. A W-2 Box 1 salary report will be requested by your designated ACA tracking & reporting specialist.

What Do I Need To Do?

Click here to review the employee file data specifications reference document.

In your current employee file, review the ACAPayTypeClassificationCode column for accurate categorization of each employee. Also, review the JobTitle and EmployeeClassCode fields assigned to each employee. If the JobTitle or EmployeeClassCode field is left blank, SET SEG will use another reasonable classification type that may include ACAPayTypeClassificationCode (hourly or salary) or ACAEmployeeDesignationCode (full-time, part-time, seasonal, or variable hour).

Also, consider affordability guidelines when determining your benefit strategy, during your annual budget review process, and when planning employee benefit contributions. Failing to provide affordable coverage under any safe harbor could result in 4890H(B) penalty risk.