New 2018 Federal Poverty Guidelines Affects ACA Safe Harbor

In January, the department of Health and Human Services released the 2018 Federal Poverty Guidelines. This updated amount is significant for benefits professionals because the Federal Poverty Guideline forms the basis for one of the three possible affordability safe harbors under the Affordable Care Act ("ACA") employer mandate.

Background Summary

As a reminder, an applicable large employer is generally required to offer at least one health plan that provides affordable, minimum value coverage to its full-time employees (and minimum value coverage to their dependents) or pay a penalty. For this purpose, "affordable" means the premium for self-only coverage cannot be greater than 9.56% (for 2018; this percentage is adjusted annually) of the employee's household income.

Of course, employers don't usually know an employee's household income, so the IRS has provided three affordability safe harbors. This means that if the employer's plan is "affordable" under one of the safe harbors, then it will be treated as affordable for purposes of the employer mandate penalty, even if it is not actually affordable for one or more employees.

New 2018 Federal Poverty Guideline

One of those safe harbors is the Federal Poverty Guideline safe harbor. Under this rule, if the cost of self-only coverage under an employer's lowest-cost minimum value plan is no more than 9.56% (for 2018) of the single Federal Poverty Guideline applicable to that individual for that year, then it will be treated as affordable. For 2018, the mainland Federal Poverty Guideline is $12,140 (there are separate poverty guidelines for Hawaii and Alaska). This means that, to satisfy the safe harbor for a mainland employee, the monthly premium amount cannot exceed $96.71 ($12,140 / 12 X 9.56% = $96.71533333).

Just because an employer's monthly premium is larger than this amount does not necessarily mean that the coverage is unaffordable. However, it does mean that the employer cannot use this safe harbor to show that its coverage is affordable.

There's Always Last Year

One of the challenges of basing affordability on the Federal Poverty Guideline is that it is not released until January. For many plans, that may be well after they have set their contribution rates for the upcoming year. By contrast, the percentage used for affordability (9.56% for 2018) is usually known by around May of the prior year.
Employers can address this in a couple of ways. Many employers who want to use this safe harbor choose to use the prior year's poverty guidelines and the current percentage to reach their premiums for a given year. For example, in setting contribution rates for 2018, the employer would use the 2017

Federal Poverty Guideline ($12,060 for the mainland) and the 2018 percentage (9.56%) and come up with a premium of $96.07 ($12,060 / 12 X 9.56% = $96.078).

Another approach is to use the premium based on the 2017 FPL until the 2018 is released and then increase the required employee contribution. However, this can create employee relations concerns and administrative difficulty. Employees may have budgeted based on one premium and not be pleased with an increase (even one that may appear relatively small). Such a change may also have implications for the employer's insurance carrier. Finally, an employer may need to evaluate, based on the size of the change in the 2018 Federal Poverty Guideline and its workforce composition, whether employees need to be given the opportunity to change their elections.

Takeaway

While the updated 2018 Federal Poverty Guideline is good to have, it may be too late for employers to make changes to their benefit plan contribution levels. Employers that are subject to the employer mandate and use this safe harbor should keep this information in mind for ACA reporting purposes and in setting rates for 2019.

If you have any questions, please contact your HUB Advisor.

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