

GOVERNANCE BENEFITS

NOVEMBER 2022

IRS Changes Family Coverage Affordability Rules

On Oct. 11, 2022, the IRS released a [final rule](#) that changed the premium tax credit (PTC) eligibility rules for family members. This change is effective for taxable years beginning after Dec. 31, 2022.

The PTC is available to eligible individuals who purchase health insurance coverage through an Exchange. Individuals are not eligible for the PTC if they have access to employer-sponsored health coverage that is affordable and provides minimum value.

Effective for 2023, the final rule changes the PTC rules for determining whether employer-sponsored coverage is affordable for family members. Currently, this determination is based on the lowest-cost self-only coverage available to the employee. Under the final rule, an employer-sponsored plan is affordable for family members if the portion of the annual premium the employee must pay for family

coverage (the employee's required contribution) does not exceed 9.5% (as adjusted annually) of household income.

The final rule does not change the affordability rules for employees. Employees will continue to have an offer of affordable employer coverage if the employee's required contribution for self-only coverage does not exceed 9.5% (as adjusted) of household income.

Additionally, this new guidance does not affect the Affordable Care Act's "pay or play" penalties for applicable large employers (ALEs), as these penalties are triggered only when an employee receives a PTC, not a family member. According to the IRS, this new guidance also does not impact an employer's reporting requirements under Internal Revenue Code Sections 6055 and 6056.

Health FSA Limit Will Increase for 2023

On Oct. 18, 2022, the IRS released [Revenue Procedure 2022-38](#) (Rev. Proc. 22-38) to announce various inflation-adjusted tax limits for 2023, including the limit on employees' salary reduction contributions to health flexible spending accounts (FSAs) offered under cafeteria plans.

Rev. Proc. 22-38 increases the health FSA dollar limit on employee salary reduction contributions to **\$3,050 for plan years beginning in 2023**. This is a \$200 increase from the 2022 health FSA limit of \$2,850.

Rev. Proc. 22-38 also increases the maximum carryover limit for a health FSA to **\$610 for 2023** (from \$570 for 2022).

Employers should ensure that their health FSAs will not allow employees to make pre-tax contributions in excess of \$3,050 for the 2023 plan year and communicate the 2023 limit to their employees as part of the open enrollment process.

An employer may impose its own dollar limit on employees' salary reduction contributions to health FSAs as long as the employer's limit does not exceed the IRS' maximum limit in effect for the plan year. For example, an employer may decide to limit employee health FSA contributions for the 2023 plan year to \$2,500.

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