COMPLIANCE BULLETIN

ACA Pay-or-Play Changes May Impact Employers in 2026

The Affordable Care Act (ACA) requires applicable large employers (ALEs) to offer affordable, minimum-value (MV) health coverage to their full-time employees (FTEs) or risk paying a penalty. This employer mandate provision is known as the "employer shared responsibility" or "pay-or-play" rules. An ALE is only liable for a penalty if one or more of its FTEs receive a premium tax credit (PTC) to pay for health insurance through an ACA Exchange (or Marketplace).

Employers should be aware of the following changes related to the ACA's pay-or-play rules for 2026:

- An ALE's health coverage is considered affordable for FTEs if their required contribution for self-only coverage does not exceed **9.96%** of their household income for the year (up from 9.02% for 2025);
- Pay-or-play penalty amounts **significantly increase**. For example, ALEs assessed with penalties because their coverage is unaffordable may be charged a monthly penalty of $417.50 for each FTE who receives a PTC (up from $362.50 for 2025); and
- The **enhanced PTC expires** at the end of 2025 (unless extended by Congress), which means that fewer individuals will qualify for the PTC and subsidy amounts will be smaller.

Action Items

ALEs should review the pay-or-play changes for 2026 in advance of the upcoming plan year. The significant increase in penalty amounts may make it more important than ever for an ALE to offer affordable, MV health coverage to its FTEs. Also, due to the increased affordability percentage, ALEs may be able to charge employees more for coverage while still avoiding penalties. When the enhanced PTC expires, fewer employees may qualify for the subsidy. However, employers with individual coverage health reimbursement arrangements (ICHRAs) may need to contribute more to meet the ACA's affordability requirements.

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Pay-or-Play Rules

- ALEs may be liable for pay-or-play penalties when employees purchase health insurance through an Exchange and qualify for a PTC.
- An ALE is an employer that employs, on average, at least 50 FTEs, including full-time equivalents, during the preceding calendar year.
- Individuals who are eligible for affordable, MV health coverage through their employers are not eligible for a PTC.

Resources

- Revenue Procedure 2025-25, which adjusts the affordability percentage for 2026
- Revenue Procedure 2025-26, which adjusts the penalty amounts for 2026
- IRS' questions and answers for employers on the pay-or-play rules

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Affordability Percentage Increases for 2026

The affordability of health coverage is a key point in determining whether an ALE may be subject to a penalty. Individuals who are eligible for employer-sponsored coverage that is affordable and provides MV are not eligible for a PTC. An ALE's health coverage is considered affordable if the employee's required contribution to the plan does not exceed 9.5% (as adjusted annually) of the employee's household income for the taxable year. For purposes of the pay-or-play rules, the affordability test applies only to the portion of the annual premiums for **self-only coverage** and does not include any additional cost for family coverage. Also, if an employer offers multiple health coverage options, the affordability test applies to the **lowest-cost option** that provides MV.

Because an employer generally will not know an employee's household income, the IRS has provided three optional affordability safe harbors that ALEs may use to determine affordability based on information that is available to them: the federal poverty level (FPL) safe harbor, the rate of pay safe harbor and the Form W-2 safe harbor.

On July 18, 2025, the IRS released Revenue Procedure 2025-25 to index the contribution percentage in 2026 for determining the affordability of an employer's health plan. For plan years beginning in 2026, employer-sponsored coverage will be considered affordable under the ACA's pay-or-play rules if the employee's required contribution for self-only coverage does not exceed **9.96%** of their household income for the year. This is a significant increase from the affordability contribution percentage for 2025 (9.02%) and the highest the affordability percentage has ever been.

This increase potentially allows employers to **charge a higher amount for health coverage while still avoiding penalties**. The new percentage has the following impact on the affordability safe harbors for 2026:

- **FPL safe harbor:** Coverage is considered affordable if the employee's contribution for self-only coverage does not exceed 9.96% of the FPL for a single individual for the applicable calendar year, which equals approximately **$129.90 per month** for calendar-year health plans (up from $113.20 per month in 2025);
- **Rate of pay safe harbor:** Coverage is considered affordable if the employee's monthly contribution for self-only coverage does not exceed 9.96% of monthly wages. For hourly employees, monthly wages are calculated by multiplying the hourly rate by 130. For an employee earning $20 per hour, this equals approximately $258.96 per month (up from $234.52 in 2025); and
- **Form W-2 safe harbor:** Coverage is considered affordable if the employee's contribution for self-only coverage does not exceed 9.96% of the employee's W-2 wages from the employer for that year. For an employee earning $45,000 per year, this equals approximately $373.50 per month (up from $338.25 in 2025).

Pay-or-Play Penalties Increase for 2026

An ALE may be subject to a pay-or-play penalty if at least one FTE receives a PTC for purchasing health insurance through an Exchange and the ALE:

- Did not offer health plan coverage to "substantially all" (generally, at least 95%) of FTEs and their dependents;
- Offered health plan coverage to substantially all FTEs but not to the specific FTE receiving the credit; or
- Offered health plan coverage to FTEs that was unaffordable or did not provide MV.

There are two types of penalties that can apply to ALEs under the pay-or-play rules: the Section 4980H(a) penalty and the Section 4980H(b) penalty. These penalty amounts are adjusted for inflation each year. They are calculated as follows:

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- **Section 4980H(a) penalties**: An ALE will be subject to a Section 4980H(a) penalty if it does not offer coverage to substantially all its FTEs (and dependents) and any one of its FTEs receives a PTC toward their Exchange plan. This monthly penalty is equal to the ALE's number of FTEs (minus 30) multiplied by one-twelfth of $2,000 for any applicable month. The $2,000 penalty amount is adjusted for inflation each year. **For 2026, the penalty increases to $3,340** (up from $2,900 for 2025); and
- **Section 4980H(b) penalties:** ALEs that offer coverage to substantially all FTEs (and dependents) may still be subject to a Section 4980H(b) penalty if at least one FTE obtains a PTC through an Exchange because the ALE did not offer coverage to all FTEs, or the ALE's coverage is unaffordable or does not provide MV. The monthly penalty assessed on an ALE for each FTE who receives a PTC is one-twelfth of $3,000 for any applicable month. However, the total penalty for an ALE is limited to the 4980H(a) penalty amount. The $3,000 penalty amount is adjusted for inflation each year. **For 2026, the penalty increases to $5,010** (up from $4,350 for 2025).

The increase in penalty amounts for 2026 is significant. For 2026, ALEs assessed with Section 4980H(a) penalties may be charged a monthly penalty of approximately **$278.33 per FTE** (minus a 30-employee reduction), up from $241.67 for 2025. ALEs assessed with Section 4980H(b) penalties may be charged a monthly penalty of approximately **$417.50 for each FTE** who receives a PTC for Exchange coverage, up from $362.50 for 2025. ALEs should consider these increased penalty amounts when evaluating the risk of being assessed with a penalty tax ("paying") versus the cost of providing affordable, MV health coverage to their FTEs ("playing").

Enhanced PTC Expires for 2026

The PTC is a federally financed subsidy that helps eligible individuals and families with low or moderate incomes afford health insurance purchased through an Exchange. The amount of the PTC is based on a sliding scale, with greater credit amounts usually available to those with lower household incomes. In general, to receive the PTC, an individual must:

- Enroll in health insurance through an Exchange;
- Have household income of at least 100% and no more than 400% of FPL for the taxpayer's family size (see below regarding a temporary enhancement expiring at the end of 2025);
- Cannot be eligible for coverage through a government-sponsored program, such as Medicaid or a state Children's Health Insurance Plan; and
- Cannot be eligible for employer-sponsored health coverage that is affordable and provides MV.

The American Rescue Plan Act of 2021 (ARPA) temporarily expanded eligibility for the PTC by eliminating the income cap and allowing individuals and families with income above 400% of FPL to qualify for a credit. Instead of imposing an income cap, the ARPA capped Exchange health insurance premiums at a specified percentage of household income. The ARPA also increased the PTC for all income brackets and reduced premiums to $0 for some lower-income households. Although these provisions were initially applicable for 2021 and 2022 only, the Inflation Reduction Act of 2022 extended this relief for an additional three years, from 2023 to 2025. According to a Congressional Research Service report, the number of Exchange enrollees receiving subsidized coverage rose from 9.2 million in 2020 (before the PTC enhancements) to 19.3 million in 2024.

Unless extended by Congress, the **enhanced PTC will expire at the end of 2025.** When the enhanced subsidies expire, individuals and families with incomes above 400% of the FPL will no longer be eligible for PTCs. Also, although individuals

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and families with incomes between 100% and 400% of the FPL may still be eligible for PTCs, the amounts will be smaller compared to the enhanced credits. This is expected to lead to a reduction in federal expenditures, as well as a rise in the number of individuals without health coverage.

Employers may feel the impact of the expiration of the enhanced PTC in various ways, depending on their workforce demographics and benefit offerings. For example, if fewer employees qualify for the PTC, an ALE's potential liability for a pay-or-play penalty may be reduced. It may also motivate employees who are not eligible for affordable coverage through their current employers to consider switching jobs to gain access to such coverage. Also, employers that sponsor ICHRAs that help employees pay their individual health insurance premiums may need to increase their contributions to keep coverage affordable for their employees.

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