

- 1) The first safe harbor allows an employer to calculate the affordable rate based on an employee's W-2 wages, as opposed to total household earnings. The employer must use Box 1 W-2 wages when using this Safe Harbor. The rules clarify that Box 1 income does not include elective deferrals to retirement plans or cafeteria plan amounts. So this somewhat skews the affordability calculation. However, based on employers' concerns that such wages may not provide an accurate picture of pay, the IRS also allows the use of two additional Safe Harbors:
- 2) Rate of Pay Safe Harbor - The "Rate of Pay" safe harbor allows the employer to multiple the employee's hourly rate of pay by 130 hours to determine the employee's monthly rate of pay (regardless of how many hours the employee actually works). The employer may then use that product to determine if coverage is affordable. So as long as the employee's monthly contribution amount for the employee-only premium is less than or equal to 9.5% of the computed monthly wages (130 hours times rate of pay) the employer satisfies the affordability requirement. For salaried employees, the monthly salary may be used for this affordability calculation.
- 3) Federal Poverty Level (FPL) - The "Federal Poverty Level" safe harbor allows the employer to use the FPL, as opposed to the employee's actual wages to determine affordability. So employer coverage is deemed affordable if the employee's cost for single coverage does not exceed 9.5% of the federal poverty level for a single individual. Therefore, if the employee's contribution to a single plan is less than 9.5% of the federal poverty level for a single individual, the affordability test is met. (The federal poverty level for a single individual in 2013 was \$11,490.)

All three of these Safe Harbors are optional. So if the employee's premium contribution does not meet one or all of these safe harbors, but the employee's portion of the premium for single coverage is still less than 9.5% of the employee's household wages, the employer will be deemed to have offered affordable coverage.

As a side note, the Department of Treasury announced on February 10, 2014 that organizations with 100 or more full time equivalent employees will only need to provide "affordable" minimum essential health insurance to 70 percent of their full time employees in 2015 in order to comply with the Employer Mandate. This recently amended phase-in of the Employer Mandate (also known as the "Play or Pay" requirements) will only impact the 2015 obligations. For 2016 and beyond, all businesses with 50 or more full time equivalent employees must provide health care coverage to at least 95 percent of their full time employees as originally envisioned in the ACA.