

COBRA Notices During FMLA

The Family and Medical Leave Act (FMLA) of 1993 is a federal statute requiring employers to permit employees to take up to twelve weeks of unpaid leave annually under certain circumstances. The FMLA requires employers to provide such employees with continued group health plan coverage at the same benefit level and under the same conditions that would have been in effect had the employee continued to work (see FMLA Sect 104(c)(1); 29 CFR Sect 825-209).

The employee's reduction of hours is not a qualifying event for COBRA purposes because the employee does not lose coverage during FMLA.

The extension of coverage during unpaid leave cannot be characterized as alternative coverage to COBRA because COBRA rights have not attached.

A qualifying event may occur if the employee does not return from unpaid leave.

<https://www.dol.gov/sites/dolgov/files/legacy-files/ebsa/about-ebsa/our-activities/resource-center/publications/an-employees-guide-to-health-benefits-under-cobra.pdf>

(This information is no way intended to be legal advice.) Please consult with your proper legal representative from your firm.
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IRS Releases ACA Affordability Rates for 2020+Rev. Proc 2019-29

The Internal Revenue issued a Revenue Procedure (see attachment) that implements the 2020 index adjustments for certain Affordable Care Act ("ACA") contribution percentages used to determine affordability under the employer shared responsibility mandate.

Under the ACA, contribution percentages are used to determine:

- whether an Applicable Large Employer ("ALE") is subject to the ACA's employer shared responsibility penalty for failure to provide full-time employees with affordable coverage that has "minimum value";
- whether an individual is exempt from the ACA's individual mandate penalty (if it is reimposed by Congress) due to lack of access to affordable coverage; and
- the amount of an eligible taxpayer's ACA premium tax credit.

ALEs are employers that had 50 or more full-time equivalent employees during the preceding calendar year.

The ACA provides that an ALE's coverage is affordable if the employee's required contribution for self-only coverage does not exceed a certain percentage of the employee's household income for the tax year. ALEs that fail to provide affordable coverage are liable for a penalty of \$3,000 per year (as indexed) for each full-time employee who receives a premium tax credit through an ACA Marketplace.

For 2020, the required contribution percentage has decreased to 9.78% (down from 9.86% in 2019). This means that if an employee's share of the premium for employer-provided coverage in 2020 is more than 9.78% of his or her household income, the coverage is not considered affordable for that employee and the ALE may be liable for a penalty if that employee obtains a premium tax credit through a Marketplace.

<https://www.irs.gov/pub/irs-drop/rp-19-29.pdf>

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