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IRS Guidance Limits Employer Pre-Tax Subsidies



The IRS has put the kibosh on any potential attempts by large employers to skirt the requirements of the Affordable Care Act (ACA) by paying employees before-tax subsidies to buy individual health insurance through private (commercial) carriers or through a Health Insurance Exchange Marketplace. According to a recently published IRS Q&A, such employer payment plans are considered group health plans, and do not conform to the ACA, potentially subjecting the employer to an excise tax of \$100 per employee, per day (\$36,500 per employee, per year). Essentially, the IRS says employers can't offer tax-free money to employees for the purpose of buying individual health insurance coverage.

Shared responsibility

Effective 2015, the ACA imposes a shared responsibility mandate on large employers with 100 or more full-time equivalent employees (2016 for employers with 50 or more full-time equivalent employees) to provide qualifying and affordable health insurance to employees or face a penalty. For information on the shared responsibility mandate, see [IRS Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act](#).

However, some employers might attempt to comply with the ACA mandate by paying employees a before-tax subsidy that they can use to buy their own health insurance from a private insurer or through a Health Insurance Exchange Marketplace. The IRS has determined that these employer payment plans are akin to group health plans. Among other things, the ACA requires that group health plans must provide certain benefits such as preventive screenings without co-pays or other charges. In addition, group health plans cannot impose annual limits on the dollar amount of benefits for any individual. The IRS says these employer pre-tax payment arrangements do not meet the requirements of group health plans under the ACA.

Some ACA provisions unaffected

The IRS essentially prohibits employers from paying tax-free funds to employees to buy individual policies of health insurance. It does not appear to affect other provisions of the ACA, however. For instance, employers can pay taxable funds to workers that they can use to buy their own health insurance. Large employers can elect not to offer any group coverage to employees and pay a penalty of either \$2,000 or \$3,000 per employee, depending on the circumstances. Or, employers can contract with a private exchange; employers can provide tax-free money to employees, which they can use to shop for coverage on the private exchange, which may provide several health-care plan alternatives. Also, it's important to note that the employer shared responsibility mandate applies only to large employers; employers with fewer than 50 full-time equivalent workers are not required to offer health insurance coverage to employees. In any case, it's a good idea for employers to consult with a health care benefits professional to discuss options available under the ACA.

The IRS Q&A is derived from IRS Notice 2013-54, Application of Market Reform and other Provisions of the Affordable Care Act to HRAs, Health FSAs, and Certain other Employer Healthcare Arrangements.

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