Your Reimbursement of Employee Health Insurance Premiums May Not Be Deductible

Prior to 2014, employers could reimburse employees for some or all

of their costs to obtain their own individual health insurance policies rather than offering health plans directly to the employees. This benefit was tax-free to employees, whether the employer reimbursed employees directly or paid amounts to their insurance companies. Unfortunately for employers, however, the deductibility of the reimbursements are no longer available.

The Internal Revenue Service (IRS) and Department of Labor (DOL), the two agencies tasked with interpreting the Patient Protection and Affordable Care Act (PPACA) announced that beginning January 1, 2014, such reimbursement arrangements, informally known as “employer payment plans,” violate certain provisions of PPACA. (“Employer payment plans” do not include the payment of health insurance premiums through a health flexible spending arrangement (FSA) that is offered to employees through a cafeteria plan.)

Moving forward, the IRS and DOL will treat employer payment plans like any other employer-sponsored group health plan subject to PPACA. For example, group health plans may not cap the dollar amount of benefits annually available to a participating employee, and non-grandfathered plans must cover certain preventive services without cost-sharing. Because an employer payment plan does not meet these requirements, it violates PPACA.

Pay or Play? In addition to shutting down premium reimbursements, the guidance answers a lingering PPACA question. Next year the so-called “pay or play” rules under PPACA will require most larger employers to either offer a group health plan to their full-time employees or pay a penalty. Many have wondered: If an employer sends its employees to the health insurance Marketplace to obtain insurance and subsidizes their costs, will this arrangement be a group health plan that avoids the pay or play penalty? The answer, apparently, is yes, but beware: the penalty for offering a non-compliant health plan is much greater than the pay or play penalty. For example, the IRS recently confirmed that employers offering non-compliant health plans, including an employer payment plan, may be subject to a penalty of $100 per employee per day ($36,500 per year). This penalty would greatly exceed the maximum pay or play penalty of $3,000 per full-time employee per year. **What You Should Do** *If you reimburse your employees on a pre-tax basis for their cost of health insurance coverage obtained in the individual market, other than through an FSA, you should end this practice immediately or consider treating the reimbursements as taxable wages*. At least for now, the IRS will permit employee premium reimbursements on an after-tax basis. If you have questions about PPACA compliance or your options to

provide health insurance benefits to your employees, feel free to contact any of our health care lawyers.
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