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HEALTH CARE REFORM ALERT

Employer Reimbursements for Individual Health Insurance Premiums No Longer Qualify

In the past, some employers have not offered a group health insurance plan to their employees. Instead, they have made payments either directly to an employee as reimbursement for premiums paid on an individual health insurance policy, or directly paid the premiums for an individual health insurance policy. Such payments have been excluded from the employee's income, and additionally, such payments (if substantiated) could be paid or reimbursed through a cafeteria plan (but not through a health FSA). Such payments now do not satisfy provisions applicable to employers under the Affordable Care Act (IRS Notice 2013-54).

A health reimbursement arrangement in which the funds are used by the employee to purchase health insurance in the individual market is not considered integrated with the individual coverage. Instead, the health reimbursement arrangement is a stand-alone plan. Therefore, ***an employer with two or more employees*** using a health reimbursement arrangement as a means to assist its employees in purchasing health insurance coverage in the individual market, whether through a state insurance marketplace, or outside the marketplace, could be subject to a Section 4980D penalty because the health reimbursement arrangement does not meet the requirement to offer preventive services with zero cost-sharing and also does not meet the no-annual-limit for essential health benefits requirements. Penalties can be up to *\$100 per day per employee* violation.

Beginning in 2014, employers that want to reimburse employees for health insurance coverage purchased in the individual market, without violating the Affordable Care Act's insurance market reform provisions, must include the reimbursements in the employee's gross income for Income Tax and FICA (Social Security/Medicare) purposes. An employer that does not want to withhold Federal Income Tax Withholding and FICA taxes from an employee's other compensation for the reimbursements included in income has the option to pay those taxes for the employee and gross up the individual's income.

Additional information is available on the IRS's website under Employer Health Care Arrangements (www.irs.gov). Please contact our office if you have questions or need assistance with these new provisions and reporting requirements.

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