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ALERTS

Employee Benefits Law Alert - Agencies Nix Post-Tax Reimbursement Of Individual Insurance Premiums

November 12, 2014 | Indianapolis | Atlanta | Chicago | Columbus | Delaware | Elkhart | Fort Wayne | Grand Rapids | Los Angeles | Minneapolis | South Bend

The Departments of Labor, Health and Human Services and Treasury recently issued a new set of frequently asked questions in which they clarify that an employer may not reimburse an employee on an after tax basis for premiums on individual health insurance policies without violating the requirements of the Affordable Care Act.

This guidance supplements guidance from 2013 in which the agencies held that an employer may not reimburse an employee on a pre tax basis for premiums for individual insurance coverage without violating the Affordable Care Act, but which did not address clearly whether employers could do so on an after tax basis. Because the 2013 guidance was not clear on this issue, a number of employers have structured arrangements for all or some of their employees to allow for post tax reimbursement of individual health insurance premiums. The recent guidance from the agencies essentially puts an end to that practice.

The guidance in the frequently asked questions suggests that employers may still offer employees additional cash payments, but may not condition the use of those cash payments on the purchase of individual health insurance coverage. An employer who chooses not to offer group health coverage to some or all of its employees should still be able to make additional taxable cash payments to its employees that those employees could choose to use to buy individual health insurance coverage, as long as the taxable cash payments are not conditioned upon the employee purchasing the individual health insurance coverage.

The frequently asked questions also clarified that employers may not target high claims risk employees with an offer of a cash payment in lieu of opting out of the employer’s group health plan -- even if that cash payment is made on an after tax basis. The agencies stated that they believe such a practice constitutes discrimination on the basis of health status, even though the effect of that discrimination may be benign. The agencies provided an example in which an employer’s group health plan requires employees to contribute $2,500 toward the cost of coverage, but the employer offers a high claims risk employee $10,000 in additional taxable compensation if the employee declines the coverage. In applying its discrimination analysis, the agencies concluded that the effective required contribution for the high claims risk employee is $12,500 (the $2,500 required of all employees and the special $10,000 opt-out payment), which is in excess of the $2,500 required employee contribution for all other employees. The agencies believe that the employee is essentially required to forgo $10,000 of additional compensation in order to obtain health insurance coverage. The reasoning behind this seems a bit suspect, but employers should

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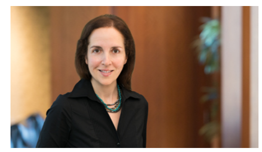

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approach this type of situation with extreme caution.

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