

The Dangers of Reimbursing Employees for Individual Health Insurance Premiums — and the Limited Relief for Small Employers

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Prior to the passage of the Affordable Care Act (“ACA”) in 2010, employers were able to reimburse their employees for the premiums those employees paid for individual health insurance. This long-standing practice was changed beginning in 2014 with the issuance of new guidance from the Internal Revenue Service and Department of Labor. Under that guidance, such “employer payment plans” are deemed to be noncompliant with the market reforms implemented under the ACA. The penalties for failure to comply with the market reforms can be severe — as much as \$100 per employee, per day.

IRS Notice 2015-17, which was issued on February 18, 2015, provides small employers with transition relief from the excise taxes that the IRS would impose on employer payment plans that do not satisfy the ACA’s market reforms. This relief applies for small employers that want to reimburse employees for the cost of obtaining individual health insurance policies on a pre-tax basis or after-tax basis, rather than maintaining a group health insurance plan. That relief does not apply, however, to employers that are “applicable large employers,” which are generally those with fifty or more full-time equivalent employees.

The Notice provides that small employers that continued to offer an employer payment plan will not be liable for the excise tax through June 30, 2015. Starting on July 1, 2015 small employers may be liable for penalties if they do not reform their plans. The relief provided does not extend to stand-alone health reimbursement arrangements (“HRAs”) that reimburse employees for medical expenses other than insurance premiums. Note, however, that because this guidance offers relief only to small employers, any large employers who still maintain these types of programs need to immediately review how they structure such programs.

While it is possible that political pressure surround the ACA may result extended or expanded relief, small employers should take advantage of the current relief window while they can to look for other means of

contributing to employee healthcare costs because it is uncertain how permanent legislative solution will evolve.

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