

Beware of Draconian Penalties for Health Reimbursement Plans

Article Highlights:

- Employer health insurance requirements
- Reimbursement plans and Obamacare
- Temporary penalty relief through June 30, 2015
- Penalty

Beginning in 2015, large employers (those with 100 or more full-time equivalent employees) must begin offering health insurance coverage to their employees. Then, in 2016, employers with 50 or more equivalent full-time employees must do the same or face penalties, called the "large employer health coverage excise tax."

Employers with fewer than 50 full-time equivalent employees are never required to offer their employees an insurance plan, but qualified small employers who do provide coverage may qualify for the small business health insurance credit.

In the past, many smaller employers have simply reimbursed their employees for the cost of insurance. They found it less expensive and had fewer administrative costs than having a group insurance plan. However, under the Affordable Care Act (ACA, or Obamacare for short), a group health plan that reimburses employees for the employees' substantiated individual insurance policy premiums must satisfy the market reforms for group health plans. However, most commentators believe an employer payment plan will fail to comply with the ACA annual dollar limit prohibition because an employer payment plan is considered to impose an annual limit up to the cost of the individual market coverage purchased through the arrangement, and an employer payment plan cannot be integrated with any individual health insurance policy purchased under the arrangement. Thus, reimbursement plans may be subject to a very draconian penalty.

Back in February, the IRS issued Notice 2015-17, which provides small employers limited relief from the stiff \$100 per day, per participant, penalties under IRC §4980D for health insurance reimbursement plans that had been addressed in Notice 2013-54. In particular, that notice provided:

- Transitional relief for employers that do not meet the definition of large employers (i.e., employers with 50 or more employees). This relief is granted for all of 2014 and for January 1 through June 30, 2015; and
- Relief for S corporations that pay for or reimburse premiums for individual health insurance coverage for 2% shareholders, as previously addressed in Notice 2008-1. The relief period is indefinite, and the IRS states that taxpayers may continue to rely on Notice 2008-1 "unless and until additional guidance" is provided.

Well, June 30, 2015 has come and gone ... and so has the small employer relief. Therefore, employers who still reimburse employees for their medical expenses are in danger of being subject to the \$100 per day (\$36,500 a year) per employee penalty. Compared to the annual \$2,000 penalty that large employers face for not providing insurance to their full-time employees, the penalties on small employers are substantial enough to bankrupt them. So, the large employer who fails to provide any insurance pays a penalty of only \$2,000 per year per employee while the employer who helps employees by reimbursing them for the cost of insurance gets hit with an up to \$36,500-per-employee penalty.

This is true even if the employer is a small employer (50 or fewer equivalent full-time employees) who is under no legal obligation to provide health insurance plans for its employees, but makes reimbursements simply to help the employees. Does this seem fair? We will let you form your own opinion.

Will Congress step in to alleviate the problem? Maybe yes and maybe no, and employers must decide if it is worth the risk to depend on Congress to act.

There is one firm, Zane Benefits, which claims to have solved the problem with a reimbursement plan that complies with the code, while others argue that it does not.

Bottom line: understand your risks if your business has a medical reimbursement plan and perhaps consider other options. Please give this office a call if you have questions.