

SMALL BUSINESSES IMPACTED BY IRS RULE ON REIMBURSEMENT OF EMPLOYEE HEALTH INSURANCE COSTS

As of July 1, 2015, a new IRS regulation subjects all businesses (including small businesses with at least two employees) that reimburse or subsidize the cost of individual health insurance policies for employees to significant potential penalties for noncompliance with the Affordable Care Act (ACA). Violators could face penalties of \$100 per-employee, per-day (maximum penalty of \$500,000 per company per year).

Given the hefty fine for noncompliance with the new IRS rule, employer-sponsored reimbursement plans that are integrated with individual health insurance policies are no longer viable options for small businesses looking to help employees pay for health coverage. Such plans are those that reimburse employees for premiums they pay for individual health insurance instead of employers establishing a health insurance plan for their employees. These funding arrangements constitute group health plans that fail to comply with the ACA, regardless of whether the reimbursement to the employees is with pre-tax or post-tax dollars. Excluding some exemptions like the retiree-only Health Reimbursement Accounts (HRAs) and "excepted benefit" HRAs, these funding arrangements must be integrated with other non-reimbursement-based group health coverage to comply with the ACA. Thus, employers that provide HRAs should ensure that those HRAs are appropriately integrated with non-HRA group health coverage that is compliant with the ACA.

There are two ways to appropriately integrate an employer-sponsored reimbursement plan with an ACA-approved group health plan. The first approach, the minimum value not required method, requires that the HRA reimburse only co-payments, co-insurance, deductibles, and premiums under the non-HRA group coverage, or reimburse medical care other than essential health benefits. The second approach, the minimum value required method, lacks any use restrictions, but requires that the non-HRA coverage be minimum value pursuant to Code §36B(c)(2)(C)(ii). Both methods require that the HRA be limited only to employees who are enrolled in the integrated non-HRA coverage. Both methods also require that employees be allowed to permanently opt-out of HRA coverage and, upon termination of employment either forfeit their HRA balance or permanently opt-out of coverage. Neither method requires that the HRA and non-HRA coverage have the same sponsor.

In conclusion, the new IRS rule leaves small businesses looking to help employees pay for health coverage with two choices. Employers must either provide their employees with a group health insurance plan compliant with the ACA or give their employees additional compensation, the payment of which cannot be conditioned upon the purchase of individual health insurance. Small businesses who have not yet integrated their employer-sponsored reimbursement plans should amend them as soon as possible to comply with the ACA.