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COMPLIANCE ALERT 2014-03



Premium Reimbursement Arrangements -- Employers Beware

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The Department of Labor (DOL) has just published a series of [FAQs regarding premium reimbursement arrangements](#). Specifically, the FAQs address the following arrangements:

An arrangement in which an employer offers an employee cash to reimburse the purchase of an individual market policy.

Where an employer provides cash reimbursement for the purchase of an individual market policy, the DOL takes the position that the employer's payment arrangement is part of a plan, fund, or other arrangement established or maintained for the purpose of providing medical care to employees, ***without regard to whether the employer treats the money as pre-tax or post-tax to the employee.*** Therefore, the arrangement is group health plan coverage subject to the market reform provisions of the Affordable Care Act applicable to group health plans and because it does not comply (and cannot comply) with such provisions, it may be subject to penalties.

An arrangement in which an employer offers employees with high claims risk a choice between enrollment in its group health plan or cash.

The DOL takes the position that offering a choice between enrollment in the standard group health plan or cash ***only to employees with a high claims risk*** would discriminate based on one or more health factors. The DOL states that such arrangements will violate such nondiscrimination provisions regardless of whether (1) the cash payment is treated by the employer as pre-tax or post-tax to the employee, (2) the employer is involved in the selection or purchase of any individual market product, or (3) the employee obtains any individual health insurance.

The DOL also notes that such an arrangement, depending on facts and circumstances, could result in discrimination under an employer's cafeteria plan (an arrangement pursuant to which an employee can choose between taxable cash and a tax qualified benefit must be made pursuant to a cafeteria plan).

An arrangement where an employer cancels its group policy, sets up a reimbursement plan that works with health insurance brokers or agents to help employees select individual insurance policies, and allows eligible employees to access the premium tax credits for Marketplace coverage.

The DOL takes the position that such an arrangement is a group health plan and, therefore, employees participating in such an arrangement are ineligible for premium tax credits (or cost-sharing reductions) for Marketplace coverage.

The DOL also takes the position that such arrangements are subject to the market reform provisions of the Affordable Care Act and cannot be integrated with individual market policies to satisfy the market reforms. Thus, such arrangements can trigger penalties.

Key Takeaway

There has been quite a bit of banter regarding whether any of the foregoing arrangements could be an effective way for employers to avoid complying with the market reforms and other provisions of the Affordable Care Act applicable to group health plans. These FAQs are a strong indication that the DOL will be forceful in its interpretation and enforcement of these provisions.

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