

**IRS Announces Temporary Relief for Small Employers
Who Reimburse Employee Individual Medical Insurance Premiums
also
New Health Savings Account Rules for 2016**

Compliance Dangers of Arrangements that Assist Employees with the Payment of Individual Health Insurance Premiums

By this time, all advisors should be aware that the IRS considers it a violation of the provisions of the Affordable Care Act (“ACA”) for an employer to maintain any kind of arrangement that reimburses current employees pretax for individual major medical premiums.

In addition, recent IRS guidance has stressed that if the reimbursement is conditional on the employee having obtained health insurance coverage, such an arrangement will violate the ACA *EVEN IF* the employer adds the payment to the employee’s W-2 as taxable compensation.

The penalty for continuing to maintain such an arrangement is potentially \$100 per day PER EMPLOYEE with no maximum penalty amount. Potentially, this could mean a penalty of \$36,500 per employee per year.

The following example illustrates a common situation that violates the ACA:

My employees submit proof that they have individual health insurance (such as a copy of the premium notice). I then either pay the premium or reimburse them for the premium and add the payment or reimbursement amount to their W-2.

Because the receipt of the funds or payment of the premium is conditioned on the purchase of health insurance, the arrangement violates the ACA.

The following example is apparently the only arrangement that will not violate the ACA:

Because I want my employees to have health insurance and I do not want to sponsor a group plan, I announce to all of my employees that I am providing \$500.00 (or some other fixed amount) per month to each employee to purchase health insurance. Any amount not used to purchase health insurance will be added to their pay check. The entire amount (premiums and additional pay) will be added to their W-2.

While this approach provides no tax benefit, it is the only remaining safe course available to employers who do not want to sponsor a group health plan.

TEMPORARY RELIEF FOR CERTAIN SMALL EMPLOYERS

On February 18th the IRS issued IRS Notice 2015-17 which gives small employers (employers with fewer than 50 Full Time Equivalent employees) though June 30, 2015 to end non-compliant arrangements without being subject to the penalty tax. (The relief was not extended to employers in the 50-100 or over 100 employee ranges.)

Special Rules for S-Corporations that maintain a shareholder-employee health care arrangement.

Additional relief was provided for certain S-Corporation arrangements where the S-Corporation pays or reimburses the individual health insurance premiums for a 2% Shareholder and the payment or reimbursement is included in income. Similar relief was not specifically provided for partners in a partnership.

Special Rules also apply to certain other arrangements.

Special integration rules also apply which may permit Medicare Premium Reimbursement Arrangements and TRICARE-Related HRAs.

NEW HEALTH SAVINGS ACCOUNT RULES FOR 2016

An FAQ issued by HHS on March 10th indicates that beginning in 2016 a High Deductible Health Plan cannot impose an out-of-pocket maximum for an individual that is greater than that imposed by the law for self-only coverage, even if the policy provides other than self-only (i.e., family) coverage.

For example, if a person purchased family HDHP coverage with a \$10,000.00 out-of-pocket limit, the plan would have to begin payment of benefits when any individual covered under the policy incurred \$6,850 of covered expenses (the annual limit on cost-sharing for 2016 for self-only coverage).

This interpretation effectively embeds an individual out-of-pocket limit in all family health plans that have an out-of-pocket limit greater than the self-only out-of-pocket limit.

This article is intended primarily to be a brief discussion of some of the guidance that has recently been issued concerning the above subjects. It is not intended to be legal, accounting, tax return preparation or other professional advice. Advantage Administrators assumes no liability whatsoever in connection with this article, nor is this article directed to specific situations. Employers are encouraged to discuss the issues raised by this article with their own legal counsel and other advisors.