

# Are You Still Reimbursing Premiums For Your Employee's Individual Healthcare Insurance? Then You'd Better Read This!!

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In the past, many employers (especially smaller companies) have offered to pay their employees' premiums for individual healthcare insurance instead of sponsoring their own group health plans. With the advent of the Healthcare Marketplace under the Affordable Care Act ("ACA"), more employers may be tempted to just give their employees money to purchase their own plans on the Marketplace. If you are currently reimbursing your employee's individual premiums, or are thinking about doing that, you need to read this because this practice is prohibited!

Under the ACA, the practice of paying or reimbursing employees' premiums for individual coverage is considered an employer payment plan, and, if it applies to two or more active employees, it would be considered a group health plan subject to the market reform requirements of the ACA. Generally, group health plans must comply with several requirements, two of the most important for this discussion being the annual dollar limit prohibition and the preventive services requirements. The annual dollar limit prohibition prevents a group health plan from putting any annual dollar limit on essential health benefits. The preventive services requirements provide that group health plans must provide certain preventive services with no cost-sharing. Since employer payment plans, by their nature, set an annual dollar limit up to the amount of the individual premium and do not provide all preventive services without cost sharing, they cannot meet these requirements and are, therefore, in violation of the ACA rules.

Continuation of this practice could result in excise taxes of up to \$36,500 per year (i.e., \$100 per day) for **each** affected individual. (Note that there is limited relief for reimbursements made to 2% shareholders of S corporations.)

Here are some common questions regarding employer payment plans:

## ***Can I still reimburse retirees for their individual coverage?***

Yes. A plan that only benefits retirees is not considered a group health plan and would not be subject to the annual limit prohibition and the preventive services requirements.

## ***Can individual premiums be reimbursed through a healthcare flexible spending account?***

No. An employer arrangement reimbursing the cost of individual coverage under a healthcare FSA is still an employer payment plan, whether funded by salary reductions or employer flex credits. Since it cannot meet the annual dollar limit prohibition and the preventive services requirements, it will not comply with the ACA.

## ***Can I still offer an "opt out" bonus to employees who decide not to enroll in the group health plan coverage?***

Yes. Employers may offer an "opt out" bonus or waiver payment to employees who waive the employer's group health plan coverage. This is not considered a reimbursement of premiums, so it is not an employer payment plan. This is true whether or not the employee is enrolling in other group health plan coverage, such as through a spouse's employer.

## ***Can I reimburse my employees for premiums for individual dental or vision coverage?***

Yes. Under the ACA, stand alone dental and/or vision coverage is not subject to the annual limit prohibition and the preventive services requirements. Therefore, employers are allowed to reimburse employees for premiums for those coverages.

***Is it OK to reimburse my employees' individual premiums on an after-tax basis?***

No. After-tax reimbursement is treated the same way as before tax-reimbursement and, therefore, is prohibited (except for retiree reimbursement or reimbursement of stand alone dental or vision insurance premiums). However, employers are free to increase an employee's wages, provided the increase is not conditioned on the purchase of an individual insurance policy.

If you have any questions regarding employer payment plans or want to discuss other options for providing healthcare to your employees, please contact Jo-Anne Mineweaser at 412-594-3920.