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Employee Affordable Care Act Penalty *DeAnna Alger, CPA*

Under the Affordable Care Act (ACA), employers with 50 or more full time equivalent employees are required to offer affordable health coverage options to those full time employees and their dependents. Failure to comply will result in hefty penalties.

In an attempt to work around the system, some employers have determined that, instead of offering employer sponsored coverage, it would be more cost effective to provide employees with non-taxable reimbursements, which they can then use to purchase private coverage. The IRS has recently released specific guidelines in a question and answer document relating to this and has determined that such an arrangement does not comply with the ACA's requirements. The ACA has eliminated an employer's ability to use stand-alone medical reimbursement plans, health reimbursement arrangements (HRA's), and other tax favored arrangements, such as cafeteria plans. Employers offering such payment plans will be subject to a \$100 per day excise tax per applicable employee. This is a total of **\$36,500 per year per employee!** On the other hand, spousal coverage reimbursement HRA's, retiree-only reimbursement plans, and integrated HRA's *are* allowed under the ACA. However, there are specific rules that **must** be followed in order for these arrangements to qualify as acceptable plans.

A Spousal Coverage Reimbursement HRA is a type of plan that permits an employee to be reimbursed for coverage on their spouse's group health plan as long as **that** health plan meets the requirements of the ACA. It is important to note that employees may want to seek professional advice regarding the tax treatment of any reimbursement received. Retiree-only reimbursement plans are used to provide retirees more flexibility with their health insurance choices. Such a plan is funded solely by the employer and is structured to reimburse the retiree for tax qualified medical expenses incurred. An integrated HRA is an arrangement where an HRA is coupled with an employer's group health plan.

In addition to offering an integrated HRA, employers must make certain that the following guidelines of the ACA are met:

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1. The group health plan must also be offered to the employees and the HRA should not consist solely of excepted benefits.
2. Employees that participate in the HRA must also be enrolled in the group health plan.
3. Participants in the plan must be able to permanently opt out of and waive future reimbursements from the HRA annually.
4. The HRA is limited to reimbursement of copayments, coinsurance, medical care that is not essential health benefits, and deductibles from the group health plan.

For many employers, this excise tax would be devastating to their business. Unfortunately, most employers don't realize that **this excise tax already applies** and that taxes have already begun racking up if they are not in compliance. Fortunately, if this is the case, if the employer can prove that the failure was due to reasonable cause and not willful neglect, and that the failure was corrected within 30 days, then no excise tax would be due. If the failure was not corrected within 30 days, then the excise would be capped at the lesser of \$500,000 or 10% of the amount paid or incurred by the employer for its group health plans.

This excise tax is the most severe monetary penalty that an employer can incur under healthcare reform. Unfortunately, not having one of the aforementioned qualified health plans is just one of many potential triggers of this potentially devastating excise tax. Therefore, it is very crucial to be in compliance.

If you have questions about this excise tax or the impact that it may have on your business, please contact Zinner & Co. LLP for further details.

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