

HEALTH CARE REFORM IMPLEMENTATION

Small Employers Offering “Employer Payment Plans” Receive Transitional Relief

February 20, 2015

SUMMARY

The IRS announced temporary transitional relief for small employers offering **Employer Payment Plans**. This relief applies to employers **currently reimbursing employees for individual health insurance premiums**. The IRS has previously stated that Employer Payment Plans do not satisfy the Affordable Care Act (ACA) market reforms, specifically the market reforms requiring a ban of annual dollar limits and free preventative care services.

Employer Payment Plans – Plans in which the Employer either:

- Reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy; or
- Directly pays a premium for an individual health insurance policy covering an employee.

The transitional relief applies through **June 30, 2015**, allowing additional time for small employers to offer plans that comply with the ACA market reforms. **Small Employers**, under the ACA, employ less than 50 full-time employees, including full-time equivalent employees, in determining ACA “large” employer status.

Recent IRS Clarifications:

- Any reimbursement of individual premiums by an employer, **whether on a pre-tax or after-tax basis**, is considered a Group Health Plan (GHP) **IF** more than one employee is entitled to reimbursement. Importantly, the market reforms apply to all GHPs, under the ACA, and Employer Payment Plans are considered GHPs.
- Increases in **employee compensation** (if not conditioned on the employee purchasing health coverage) are not Employer Payment Plans.
- Similar relief is **NOT** available for “large” employers (50 or more full-time employees, allocating for full-time equivalent employees).
- The IRS transition relief does **NOT** apply to stand-alone Health Reimbursement Arrangements (HRAs) or other arrangements to reimburse employees for medical expenses other than insurance premiums.

- **S Corporation** Employer Payment Plans covering a 2% shareholder will **NOT** be subject to excise taxes for violating the ACA’s market reforms (at least through the end of 2015). These shareholders may be reimbursed for individual premiums since all costs may be deducted under the federal tax law. The Notice states the IRS is considering additional regulatory guidance on the applicability of market reforms to 2% shareholder employee arrangements.

- Employer Payment Plans that pay for or reimburse premiums for Medicare Parts B or D will be **considered integrated** with another GHP offered by the employer, if certain specified conditions are met. Additionally, HRAs that pay for or reimburse premiums for TRICARE will be **considered integrated** with another GHP offered by the employer. If Employer Payment Plans are integrated with another GHP, these plans will satisfy market reform rules.

TAKEAWAYS

- Small employers not subject to the employer coverage mandate and penalty exposure under the ACA (i.e., employers with fewer than 50 full-time employees, including the allocation for full-time equivalent employees), currently offering coverage through **Employer Payment Plans** will not be subject to excise taxes for:
 - 2014, **IF** less than 50 full-time equivalent employees in 2014
 - 2015, **IF** less than 50 full-time equivalent employees between January 1 through June 30, 2015
- Small Employers will have through **June 30, 2015**, to offer plans that comply with the ACA market reforms.

Please reach out to your Oswald representative with any questions.

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