

Cash for Premium Payments & Other Problem Plans Avoid 5 Costly Mistakes



Under Health Care Reform, the following employer arrangements will violate certain [market reforms](#) of the Affordable Care Act (ACA). As a result, the following mistakes should be avoided:

- ✘ **Mistake 1. Cash Reimbursements for Individual Policies.** Arrangements under which an employer reimburses an employee for **some or all of the premium expenses** incurred for an individual health insurance policy, or arrangements under which the employer uses its funds to **directly pay the premium** for an individual health insurance policy covering the employee, will [fail to satisfy](#) the annual dollar limit prohibition and preventive services requirements.
- ✘ **Mistake 2. Cash-or-Coverage Arrangements Offered Only to Employees With High Claims Risk.** An employer offering employees with high claims risk (e.g., those with chronic medical conditions, such as diabetes or cancer) a choice between enrollment in its standard group health plan or cash will [violate certain non-discrimination rules](#), regardless of whether:
 - The cash payment is treated by the employer as pre-tax or post-tax to the employee;
 - The employer is involved in the selection or purchase of any individual market product; or
 - The employee obtains any individual health insurance.
- ✘ **Mistake 3. IRS Reimbursement Plans to Purchase Individual Policies.** Products claiming that employers can set up an [Internal Revenue Code Section 105 Reimbursement Plan](#) that allows employees to select individual insurance policies and be eligible for premium tax credits for Health Insurance Marketplace coverage are **not allowed** for [two reasons](#):
 - These types of arrangements are themselves group health plans and, therefore, employees participating in such arrangements are **ineligible** for premium tax credits for Marketplace coverage.
 - Such arrangements will violate the ACA's market reforms, including the annual dollar limit prohibition and preventive services requirements.
- ✘ **Mistake 4. HRAs Used for Employees' Individual Policy Premiums.** Health reimbursement arrangements (HRAs) used to purchase health insurance coverage on the **individual market** (except for retiree-only HRAs) will [fail to comply](#) with the ACA's annual dollar limit prohibition and the preventive services requirements.
- ✘ **Mistake 5. Offering a Qualified Health Plan as a Cafeteria Plan Benefit.** Employers [may not provide](#) a **qualified health plan offered through the Individual Health Insurance Marketplace** as a benefit under the employer's [section 125 cafeteria plan](#) (a plan which meets specific requirements to allow employees to receive benefits on a pre-tax basis). This rule **does not apply** to group coverage offered through the Small Business Health Options Program (SHOP) Marketplace.

Penalties

The arrangements listed above **may be subject to a \$100 per day excise tax per applicable employee (which is \$36,500 per year, per employee)** under the federal tax code. Additional penalties may apply. **Note:** Pursuant to IRS [transition relief](#), **this penalty will not apply until July 2015** for small employers (generally those **with fewer than 50 full-time employees**, including full-time equivalents) that reimburse or directly pay individual health insurance premiums.

Due to the potential for significant penalties and the complexity of the law in this area, employers considering a cash or payroll practice option are strongly advised to consult knowledgeable benefits counsel to ensure full compliance with the law.

Last Updated: February 19, 2015

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