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## 5 Year-End Reminders on the Affordable Care Act

**Legal Update**

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We are near the end of the year and had hoped we would have some of the more highly anticipated regulations under the Affordable Care Act (ACA), such as auto-enrollment and nondiscrimination for fully-insured group health plans. To date, that guidance has not been issued. Nonetheless, we wanted to remind you of some recent developments and upcoming deadlines under the ACA.

**They Really Mean It -- No Reimbursement of Individual Health Premiums**

The IRS, DOL and HHS jointly issued guidance in the form of three FAQs regarding issues raised under the Affordable Care Act when employers create arrangements to help employees pay for individual health insurance policies. The FAQs supplement earlier guidance issued in September 2013, stating that these arrangements create a group health plan that will not comply with the Affordable Care Act mandates, thereby subjecting the employer to significant penalties. Employers cannot reimburse employees' individual premiums on either a pre-tax or after-tax basis, and cannot condition cash payments made to employees on the employees having coverage under individual health insurance policies. If employers who have these arrangements have not already done so, they should take steps now to terminate them, and should be wary of vendors who are marketing these products.

**New Change in Status Rules**

Employers who sponsor cafeteria plans that allow employees to pay their health insurance premiums on a pre-tax basis may want to consider amending their plans to reflect new change in status rules. Generally, an employee's election to pay premiums on a pre-tax basis must be irrevocable for the plan year, unless the employee experiences a change in status as defined by the plan and the IRS regulations. The new change in status rules permit a mid-year election change to the participant's premium election in the following new circumstances, if certain conditions are met:

- If, during the stability period, the employee's hours reduce to less than 30 hours per week, the employee may revoke his/her premium election for coverage under

the employer's group health plan. However, the employee must enroll in another health plan by the first day of the second calendar month following the month in which the election is revoked. The employer may rely on a reasonable representation from the employee that he/she has or intends to enroll in another health plan and that coverage will become effective within this time period.

- If the employee becomes eligible to enroll on the exchange under a special enrollment period, or wants to enroll on the exchange during the annual enrollment period, the employee may revoke his/her premium election. However, as a condition to revoking the election, the employee must enroll in the exchange with coverage effective no later than the day immediately following the last day that coverage under the employer's group health plan was in effect. Again, the employer may rely on a reasonable representation from the employee that he/she has or intends to enroll on the exchange and that coverage will become effective within this time period.

Employers who wish to add these new change in status events must amend their cafeteria plan documents and communicate them to their employees. Changes cannot be permitted until the amendment is adopted.

### **Evidence of Coverage for Individual Tax Returns**

Employers are not required to provide employees any specific documentation relating to whether the company's group health plan provides minimum essential coverage. According to informal guidance provided by William Smits, a senior manager in the IRS Wage and Investment Division, during the American Institute of CPA webcast on November 13, 2014, employees do not need to obtain a formal document evidencing their health coverage when filing their 2014 tax returns.

### **Upcoming Reporting Requirements**

Starting in 2015, "applicable large employers" and employers that sponsor self-insured group health plans must comply with new information reporting requirements. In general, returns must be filed by February 28 of the following calendar year (March 31 if filed electronically). In addition, certain employee statements must be provided by January 31 of the following year. If the filing deadlines fall on a Saturday or Sunday, the reports must be filed and statements provided on the next business day. Thus, the first returns required to be filed for the 2015 calendar year must be filed by March 1, 2016 (March 31, 2016, if filed electronically). Likewise, the first employee statements must be provided by February 1, 2016. All reports are based on the calendar year.

Employers will need detailed information about the coverage offered to its full-time employees and their dependents. The forms and instructions are still in draft form and may be subject to change; however, employers should take steps now to gather the required information. Payroll providers, carriers and other vendors also may be able to assist employers with preparing these new reports.

## Delay in Health Plan Identifier Requirement

Under final rules implementing HIPAA all group health plans are required to obtain a standard Health Plan Identifier, also referred to as a HPID, for claims processing purposes. The HPID requirement applies to health, dental, vision, health reimbursement arrangements and health flexible spending accounts. For large health plans (annual receipts over \$5 million) the original effective date was November 5, 2014, and all other health plans were to obtain the HPID by November 5, 2015. Just days prior to the HPID effective date for large health plans, CMS announced a delay of the HPID requirement "until further notice."

Should you have any questions about these new developments or about complying with the Affordable Care Act, please contact someone in the Compensation Planning & Employee Benefits Group. We can help you understand how these requirements may affect your company and can work with you to address your company's specific needs.