

ACA Limits on Arrangements that Pay for Employee Coverage

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Before the Affordable Care Act (ACA), employers had a wide variety of options when it came to paying for employee coverage. One common design, particularly for smaller employers, was to reimburse employees on a pre-tax basis for premiums the employee paid to purchase coverage in the individual market. These arrangements were frequently called “105(h) plans” or “health reimbursement arrangements” and may have also allowed the reimbursement of other out-of-pocket medical expenses.

The ACA has severely curtailed the situations in which these arrangements are permissible. Essentially, an employer can reimburse the cost of an employee’s individual medical coverage only if the arrangement is not subject to the ACA. All such arrangements covering two currently-employed individuals are subject to the ACA. This means that reimbursement arrangements are generally permitted only for retiree-only plans (i.e. plans that do not cover any current employees) and plans that cover only one current employee.

The penalty for having an impermissible arrangement can be astronomical. An employer with an impermissible arrangement can be subject to an excise tax of \$100 per day with respect to each individual covered by the arrangement. There are certain limited exceptions to the excise tax, and correction of the arrangement may be a factor. Therefore, any employer currently sponsoring such an arrangement should consult with counsel as quickly as possible to determine whether the arrangement is permissible and whether any excise tax may be due.

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