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New Guidance on PPACA's Employer Mandate and Employer Payment Plans

The IRS periodically updates a collection of frequently asked questions and answers addressing a range of implementation issues related to the employer “shared responsibility” mandate provisions under the Patient Protection and Affordable Care Act (PPACA). Newly added questions (47-56) provide clarification on a number of relevant topics, including:

- Considerations if a plan offers health insurance coverage to all full-time employees but not to dependents.
- Consequences for an employer that offers all full-time employees and dependents health coverage but one of the employees’ dependents enrolls in exchange coverage.
- How to satisfy the minimum value requirements.
- Whether an employer must offer insurance to avoid a penalty payment, even if all employees obtain health insurance coverage through another source.
- How to determine if a business is part of a controlled group.
- Definitions of seasonal “employees” versus seasonal “workers.”
- Measuring hours worked where employee works for multiple companies, or for two different subsidiaries of a parent corporation that forms a controlled group.
- Special considerations for small businesses.

Another piece of new guidance on Employer Health Care Arrangements consists of two questions addressing “employer payment plans” that reimburse employees for premiums paid for individual policies purchased in or outside the state or federal health exchanges (or “Marketplaces”). Effectively, this confirms new regulatory guidance that prohibits an employer from using an employer payment plan (including through a health reimbursement arrangement or Section 125 cafeteria plan) to provide tax free reimbursement or payment of individual health insurance premiums for active employees. Employer payment plans are more fully described in IRS Notice 2013-54 and DOL Technical Release 2013-03. The new guidance confirms that these employer payment plan arrangements are considered to be group health plans subject to the market reforms and cannot be integrated with individual policies to satisfy those requirements. As a result, “…such an arrangement fails to satisfy the market reforms and may be subject to $100/day excise tax per applicable employee (which is $36,500 per year, per employee).”

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