# Legislative Update

## IRS Consequences - Reimbursing individual insurance premiums for employees

**Provided by Kapnick Insurance Group**

On May 13, 2014, the IRS issued FAQs addressing the consequences for employers that do not establish a health insurance plan for their employees, but instead reimburse employees for individual health insurance premiums.

### Quick Facts:

- "Employer payment plans" are arrangements in which employers reimburse employees on a pre-tax basis for individual health insurance premiums.
- These arrangements do not comply with the ACA's market reforms.
- Employer payment plans may be subject to an excise tax of **$100/day** per applicable employee.
- Premium reimbursement arrangements made on an after-tax basis will still be permitted.

Affordable Care Act (ACA) reforms that took effect this year may make purchasing health insurance in the individual market more accessible. Due to these reforms and the rising costs of health coverage, some employers have considered helping employees pay for individual health insurance policies instead of offering an employer-sponsored plan.

On May 13, 2014, the Internal Revenue Service (IRS) issued FAQs addressing the consequences for employers that do not establish a health insurance plan for their employees, but instead reimburse employees for premiums they pay for individual health insurance (either inside or outside of an Exchange). These arrangements are known as employer payment plans.

**Background on Employer Payment Plans**

IRS Revenue Ruling 61-146 provides that if an employer reimburses an employee's substantiated premiums for non-employer sponsored hospital and medical insurance, the payments are excluded from the employee's gross income under Internal Revenue Code (Code) section 106. This guidance allowed an employer to pay an employee's premiums for individual health insurance coverage without the employee paying tax on the amount. IRS Notice 2013-54, referred to these types of arrangements as "employer payment plans." Employer payment plans are considered to be group health plans subject to the ACA's market reforms, including the annual limit prohibition and the preventive care coverage requirement. The Notice clarifies that these arrangements provided to employees cannot be integrated with individual policies, and thus fail to satisfy the ACA's market reforms. As a result, effective for 2014 plan years, these plans are essentially prohibited.

## Consequences for Employers

Because employer payment plans do not comply with the ACA's market reforms, the IRS indicated in the FAQs that these arrangements may be subject to an excise tax of $100 per day for each applicable employee (**$36,500 per year per employee**) under Code Section 4980D.

Note: An employer payment plan generally does **not** include an arrangement under which an employee may have an **after-tax** amount applied toward health coverage, or may take that amount in cash compensation. Thus, premium reimbursement arrangements made on an **after-tax** basis will still be permitted.