Brought to you by Benefit Administration Company, LLC.

Pay or Play Penalty – Cafeteria Plan Elections

Beginning in 2014, the Affordable Care Act (ACA) imposes “pay or play” requirements on large employers. Under these “pay or play” requirements, large employers that do not offer health coverage to their full-time employees and their dependents, or that offer coverage that is either unaffordable or does not provide minimum value, may be subject to a penalty. This penalty is also referred to as a “shared responsibility payment.”

On Jan. 2, 2013, the Internal Revenue Service (IRS) published **proposed regulations** that provide further guidance on the employer shared responsibility provisions, including a transition rule for health plan coverage elected under a cafeteria plan. The regulations are not final. However, employers may rely on the proposed regulations until final regulations or other applicable guidance is issued.

This Legislative Brief describes the transition rule for coverage elected under a cafeteria plan.

CAFETERIA PLAN ELECTIONS

Many employers offer health plans to employees through salary reduction under a section 125 cafeteria plan. Generally, cafeteria plan elections must be made before the start of the plan year, and are irrevocable during the plan year (except for a narrow set of circumstances).

The individual mandate and the availability of coverage through an Exchange both are effective as of Jan. 1, 2014. This date may raise issues for plans that do not have a January 1 plan year, which the IRS calls “fiscal year plans.”

An employee who is eligible to enroll in an employer’s plan, but did not do so, may wish to enroll in the employer’s plan in the middle of the plan year to meet the individual mandate requirements. An employee who is already covered under a fiscal year plan might wish to discontinue coverage under that plan and enroll in an Exchange plan in the middle of the plan year.

TRANSITION RULE – PERMISSIBLE ELECTION CHANGES FOR 2013 PLAN YEARS

Under the proposed regulations, an applicable large employer may choose to amend its cafeteria plan to permit either (or both) of the following changes in salary reduction elections, which apply regardless of whether employees experience a change of status event under the cafeteria plan regulations:

- An employee who made a salary reduction election through his or her employer's cafeteria plan for health plan coverage with a fiscal year beginning in 2013 can prospectively revoke or change his election regarding the plan during that plan year.
- An employee who did not make a salary reduction election under his employer's cafeteria plan for health plan coverage with a fiscal deadline beginning in 2013 (before the applicable deadline under the cafeteria plan regulations) can make a prospective salary reduction for coverage on or after the first day of the cafeteria plan's 2013 plan year.

These changes are permitted only once during the plan year, and only with respect to accident and health plan coverage offered under a fiscal year plan.

WRITTEN PLAN AMENDMENT REQUIRED

Employers that wish to allow the change in election rules permitted under this transition relief must incorporate the rules in their written cafeteria plans. Cafeteria plans can be amended retroactively to implement these transition rules.

The retroactive amendment must be made by Dec. 31, 2014, and must be effective retroactively to the date of the first day of the cafeteria plan's 2013 plan year.

Source: Internal Revenue Service