



This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

MARCH 2015 IRS GUIDANCE FURTHER RESTRICTS EMPLOYERS' ABILITY TO REIMBURSE EMPLOYEES FOR HEALTH INSURANCE PREMIUMS; POLICIES MUST BE MODIFIED BY JUNE 30, 2015

In the past, many employers, including nonprofit employers, have reimbursed employees for the cost of individual health insurance premiums (including reimbursements for Medicare or Tricare premiums), through reimbursements paid directly to employees or to the insurance carrier, through cafeteria plans, or through stand-alone defined contribution plans, such as Health Reimbursement Accounts (HRAs). For some employers, this was more cost-effective option than offering a group health plan. Last year, the Internal Revenue Service (IRS) and the Department of Labor (DOL) labeled reimbursement arrangements such as these as "employer payment plans," and indicated that employer payment plans that provided pre-tax payment of premiums would no longer be allowed without imposing excise taxes of up to \$100 per day per employee on the employer. The IRS has now issued additional guidance clarifying that after-tax reimbursement of health care premiums also is not permissible, and giving small employers (with fewer than 50 employees) until June 30, 2015 to comply with the new rules to avoid the excise taxes.

The IRS issued frequently asked questions (FAQs), which reaffirmed and clarified this prohibition. The FAQs indicate that employer payment plans that fit the description above are considered to be group health plans, subject to the market reform provisions of the Affordable Care Act (ACA). The market reform provisions prohibit annual and lifetime dollar limits on essential health benefits, and require certain preventative services to be provided without cost sharing. There are some limited exceptions to the market reform provisions but stand-alone HRAs and pre-tax premium reimbursements through cafeteria plans are no longer permitted.

The IRS has indicated that employers can increase an employee's compensation without violating these new rules, so long as the compensation increase is not conditioned on the purchase of health insurance. Therefore, a simple pay increase or discretionary bonus may not trigger penalties for the employer.

In addition, reimbursement of Medicare Part B or Part D is permitted only if (a) the employer offers a separate group health plan that meets the requirements of the ACA, and is offered to employees who are enrolled in Medicare Part A and Part B, and (b) the reimbursement is limited to Medicare Part B or Part D premiums. Similar rules apply to the reimbursement of Tricare premiums.

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Employers who have been reimbursing employees for health insurance premiums, either on a pre-tax or after-tax basis, should seek legal advice for assistance in structuring an alternative benefit arrangement before June 30, 2015.

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