

Stand Alone HRAs, Employer Payment Plans and the ACA's Most Overlooked Employer Penalty

Employers that currently sponsor employer payment plans or standalone health reimbursement agreements, which likely violate the Patient Protection and Affordable Care Act (ACA), are running the risk of being liable for an excise tax of \$100 per day, per plan participant. Unfortunately, many employers do not seem to know that their plans may now violate the ACA.

Since its passage, the vast majority of employer community attention given to the ACA as focused on the ACA's employer mandate. By now, most employers have a general understanding of the employer mandate. Unfortunately, many employers remain unaware of the ACA's additional restrictions and the related penalties that extend to the other health-related benefits that may have historically offered their employees.

Two of the most common types of benefits that have been significantly affected by the ACA are Employer Payment Plans (EPPs) and Health Reimbursement Arrangements (HRAs). The ACA also affected Flexible Spending Accounts (FSAs) and Health Savings Accounts (HSAs) but to a somewhat lesser extent. These latter types of benefits are not addressed in this article.

An EPP (as defined by IRS Notice 2013-54) is an arrangement under which the employer either (1) reimburses employees for the premiums that the employee has paid for health coverage that is not sponsored by the employer, or (2) makes direct premium payments to an insurance company for employee health coverage that is not sponsored by the employer. In 1961, the IRS (in Revenue Ruling 61-146) confirmed that these premium by the employer, (whether directly to the insurance company or in the form of a reimbursement to the employee), were excludable from an employee's gross income and permissible for the employer. Prior to the passage of the ACA, EPPs were seen as a good option for employers who wanted to help their employees cover the cost of obtaining health insurance but did not want to sponsor the plan themselves.

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