

COMMERCIAL INSURANCE

EMPLOYEE BENEFITS

PERSONAL INSURANCE

RISK MANAGEMENT

SURETY



PARKER | SMITH | FEEK

Q&A FROM ASSUREX GLOBAL WEBINAR

FEBRUARY 23, 2017

KEEPING UP WITH CHANGES TO EMPLOYEE BENEFITS RULES (PART 1)

Q. Is there a company that can process the 1094 & 1095's for an employer? I'm struggling with the terminology of these forms as to what is needed to be reported

A. There are many different vendors offering employer reporting services. Many payroll and ben admin vendors have expanded their services to include employer reporting. There are also stand-alone employer reporting vendors available. In addition, you may be able to obtain assistance from your Assurex Global Partner.

Q. When would the employer need to comply with the IRS memorandum as far as changing the payroll deductions to post tax if they don't want the benefit to be considered taxable income?

A. This is a bit of an evolving issue...Since the IRS released the memorandum in January, fixed indemnity insurance carriers have pushed back claiming that the IRS interpretation is too broad. The IRS has stated that they plan to release additional clarification on their position, but to-date we have not seen anything. The text of the IRS memorandum is clear, and even earlier guidance shows that arrangements like this can create some tax liability on the part of benefit recipients. However, questions remain on how much employers actually need to be involved. The IRS needs to clarify any employer responsibility for reporting the income, and whether or not the employer has any potential liability for unpaid payroll taxes. Obviously if an employer chooses to offer fixed indemnity plans where the employees pay the total premiums on an after-tax basis, there is no compliance issue no matter what the IRS does going forward. But if the employer contributes toward the premiums and/or allows any employee contributions to be run through a cafeteria plan on a pre-tax basis, there is likely some tax liability for benefit recipients and potentially some employer responsibility and tax liability as well. Considering the outstanding questions in regard to employer responsibility and tax liability, some employers are choosing to wait and see what, if any, additional guidance the IRS provides.

If the IRS clarifies there is some employer reporting and tax liability potential:

- Employers who currently contribute toward fixed indemnity premiums or allow employee contributions for such plans to be handled pre-tax may want to change how premiums for fixed indemnity plans are handled going forward. If the employer decides it would prefer to characterize pre-tax employee payments as taxable income, we would suggest doing so by adjusting payroll for the entire calendar year, not just for payments going forward.
- On the other hand, if employers would prefer to continue contributing toward such coverage and/or offering the ability to pay for the premiums on a pre-tax basis, it may be necessary to explore options to track benefit payments through fixed indemnity plan vendors going forward, as well as communicate potential tax liability to benefit recipients.



Q. It is a tax on the premium correct, not the "value of the benefits provided"?

A. Somewhat similar to how disability benefit plans (LTD & STD) are handled, if the premiums are paid with after-tax dollars, then the benefits received under the plan are not taxable. However, if the premiums are paid with pre-tax dollars, then the benefits received under the plan may be taxable to the extent they exceed the amount to be taxable...we are still waiting on further clarification from the IRS on the exact intent of the memo and proper taxation of fixed indemnity plan premiums handled on a pre-tax basis.

Q. Would this include wellness programs / HRAs in the total costs of \$8,000 / \$20,000?

A. For purposes of either the Cadillac Tax or tax exclusion limits, it's not clear exactly which types of coverage would be included in determining the total cost of coverage. It's possible that dollars contributed toward HSAs, health FSAs, HRAs and even some excepted benefits may be included or excluded. Further guidance will be needed prior to implementing either provision.

Q. Is it likely that any changes to the HSA (like the increases) be implemented this year?

A. Probably not likely...proposed legislation states an effective date of 2018.

Q. Is the good faith effort rule in place for 2017? I think it is but want to check.

A. Yes, Notice 2016-70 extended the good faith relief for reporting for the 2016 calendar year (reporting actually takes place in early 2017). The Notice indicates the following standards for a finding of a "good faith" effort:

"In determining good faith, the Service will take into account whether an employer or other coverage provider made reasonable efforts to prepare for reporting the required information to the Service and furnishing it to employees and covered individuals, such as gathering and transmitting the necessary data to an agent to prepare the data for submission to the Service, or testing its ability to transmit information to the Service. In addition, the Service will take into account the extent to which the employer or other coverage provider is taking steps to ensure that it will be able to comply with the reporting requirements for 2017."

Q. Is the definition of a HDHP likely to change also (i.e. higher deductibles)?

A. We have not seen anything so far which would change the definition of a high deductible health plan (HDHP).

Q. Have they considered allowing HSA accounts for persons with ANY type of coverage, instead of only HDHP coverage?

A. The American Health Care Act expands the ability to contribute to and use HSAs, but keeps them tied to HDHPs. The World's Greatest Healthcare Plan does remove the HDHP requirement and ties Roth HSA eligibility (rather than HSA eligibility) to a broader concept of creditable coverage (similar to minimum essential coverage under the ACA). It seems unlikely the World's Greatest Healthcare Plan will pass, but it does indicate there is discussion about changing HSA-eligibility requirements.

COMMERCIAL INSURANCE

EMPLOYEE BENEFITS

PERSONAL INSURANCE

RISK MANAGEMENT

SURETY



PARKER | SMITH | FEEK

Q. Is the employer reporting 1095s/1094s requirement based on number of employees?

A. Applicable large employers (50 or more full-time equivalents (FTEs)) are required to report on offer of coverage information for full-time employees. When counting FTEs, it is necessary to count hours of service for all full-time and part-time employees.

In addition, employers of all sizes who offer self-funded group health plans are required to report coverage information under the self-funded plan.

This communication is distributed for informational purposes and on the understanding that the author has not been engaged by the recipient to render legal or accounting advice or services. While every effort has been taken in compiling this information to ensure that its contents are accurate, the author cannot accept liability for the consequences of any reliance placed upon it. Readers should always seek legal counsel or professional advice before entering into any commitments.

IRS Circular 230 Disclaimer: Any U.S. federal tax information provided in this document is not intended or written to be used, and it cannot be used (i) for the purpose of avoiding tax penalties, or (ii) in promoting, marketing or recommending to another party, any partnership or other entity, investment plan, arrangement or other transaction addressed herein.

COMMERCIAL INSURANCE

EMPLOYEE BENEFITS

PERSONAL INSURANCE

RISK MANAGEMENT

SURETY



PARKER | SMITH | FEEK