Employee Benefits Report

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Return of the Association Health Plan?

The Affordable Care Act did away with association health plans. Or did it?

Some small employers have relied on association health plans (AHPs) to buy employee health insurance, rather than buying a small group plan. That's because it usually costs less for large organizations to provide health insurance than for small ones. This happens for several reasons:

- Workers in small firms, on average, have lower wages than workers in large firms. As a result, small-firm employees are less able to af-

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This Just In…

Boost enrollment in your 401(k) plan by letting employees know about the Saver's Credit. Low- and middle-income workers can receive a tax credit by making eligible contributions to an employer-sponsored retirement plan, such as a 401(k) or 403(b) or an individual retirement arrangement. To earn a credit for tax year 2014, employees must make their contributions to an employer-sponsored plan by December 31, 2014 or to an individual retirement account (IRA) by April 15, 2015.

The credit allows qualifying taxpayers to take an immediate credit of up to $1,000 off their income taxes for singles and $2,000 to persons filing jointly, if they meet the following criteria:

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ford comprehensive health insurance, and less of a tax incentive exists for providing health insurance through their employer.

- Small firms pay more for a given benefit package than do larger firms because of higher administrative expenses per enrollee and less purchasing power.
- Small firms generally purchase insurance that is subject to state benefit mandates and other regulations, which tend to increase average premiums. Firms that self-insure—mostly large firms—are exempted from those state insurance rules by the Employee Retirement Income Security Act (ERISA). This means they do not have to provide certain benefits that states require plans sold within their borders to provide.

The Affordable Care Act and AHPs

The Patient Protection and Affordable Care Act (ACA) requires plans sold through an association to individuals and small employers to meet the same rating and benefit requirements that other individual and small group plans must meet. This includes the requirement that health plans cover certain "essential health benefits." This makes AHPs less competitive than some had been in the past. However, the ACA created a loophole for an "ERISA bona fide group or association of employers," which allows these groups to be treated as a single large-group health plan. This exempts a "bona fide group" from meeting the ACA's small-group health plan requirements.

Business Insurance recently reported on a study of association health plans by the Robert Wood Johnson Foundation. Researchers found that some states (particularly Oregon), are turning a blind eye on the requirement that AHPs be bona fide associations. "State regulators [in Oregon] indicated that the authority to determine whether or not health coverage through an association qualified for ERISA large-group coverage rests with the U.S. Department of Labor [instead of with the state regulators]." To meet the requirement, "Most insurers have simply asked the association to produce a legal opinion that it meets the criteria for 'ERISA bona fide' status, allowing the insurer to provide a single large-group health plan."

Legitimate association plans can help smaller businesses get quality coverage. If you are approached by someone offering an association plan for small businesses, you will want to ensure it is a bona fide association. Otherwise, you might not be complying with the requirements of the ACA. In addition, your plan will have appropriate state oversight. Past abuses by so-called ERISA plans have left some businesses without the coverage they paid for. State regulation of insurance helps consumers by licensing and overseeing insurers and agents and by giving consumers somewhere to turn in cases of disputes with their insurer.

We provide small businesses with ACA-compliant health plans and other benefits through quality insurers. For more information on your health plan options, please contact us. ■

1 Lower income. For singles, married individuals filing separately or qualifying widow(er)s, this means an income up to $30,000. Heads of household can earn the credit with income up to $45,000, and married couples filing jointly with incomes up to $60,000.

2 Be at least 18 years old by the end of the year.

3 Not a full-time student during the calendar year.

4 Cannot be claimed as a dependent on another person's return.

For more suggestions on boosting 401(k) enrollment and avoiding compliance issues, please contact us.

What Employers Need to Know About Bonuses, Awards and Gifts

At year end, many employers like to reward their employees. What you do could affect your taxation and that of your employees. Here are a few basics to keep in mind.

Cash bonuses: Rewarding high achievers can help retain them and raise the bar on other employees. Employers can deduct amounts they pay as employee bonuses as a business expense. If your business uses a cash accounting basis, you can deduct bonuses this year if you pay them before the end of the year. If your business uses accrual accounting, you can pay bonuses next year and still get the deduction this year if you declare the bonuses this year. Paying bonuses to a business owner or a member of an owner's immediate family can create sticky tax situations, so consider the tax consequences. To avoid problems, be sure to document your bonus declaration in corporate minutes.

Employers must show any money they pay as bonuses or awards to employees on the employee's Form W-2. Employees must report any bonuses or awards they receive as income. If you give employees goods or services (such as a vacation trip) as an award, they must include the fair market value of the goods or services in their income. Any promised bonuses or awards do not become taxable to employees until they actually receive the award or have it made available to them.

Cash bonuses include cash and equivalents, such as cash and gift certificates.

Profit Sharing

Employers have other ways of rewarding employees for good performance.

Profit-sharing plans: Profit-sharing plans allow employers to decide (within limits) from year to year whether to make profit-sharing contributions on behalf of participants. If you make contributions, you must do so according to a pre-determined formula. Contributions will be accounted for separately for each employee. You can subject contributions to a vesting schedule, which can help with employee retention. Employees can also contribute to their profit-sharing plan, if you so choose.

Employers can deduct contributions to the plan as a business expense. Employees do not have to pay taxes on their contributions until they are distributed. Business owners can use profit-sharing plans to maximize their tax-favored retirement savings. For 2015, the annual defined contribution limit rises to $53,000 (employer and employee combined). Individuals age 50 and older have a higher limit, $59,000 for 2015.

Profit-sharing plans must meet specific disclosure and administration rules. Although employers can decide which employees can participate in the plan, the plan cannot be discriminatory, or favor only highly compensated employees. To ensure your plan passes nondiscrimination tests, you must allow a substantial number of rank-and-file employees to participate.

Employee stock ownership plans (ESOPs): An ESOP is a type of tax-qualified employee benefit plan in which most or all of the assets are invested in stock of the employer. Like profit-sharing and 401(k) plans, which are governed by many of the same laws, an ESOP generally must include at least all full-time employees meeting certain age and service requirements. The employer sets up a trust fund, and contributes new shares of its own stock or cash to buy existing shares. Alternatively, the ESOP borrows cash, which it uses to buy company shares or shares of existing owners. The company then makes tax-deductible contributions to the ESOP to repay the loan, meaning both principal and interest are deductible.

Employees gradually vest in their accounts and receive their benefits when they leave the company (although there may be distributions prior to that). Employees are taxed when distributions are made.

Tangible goods: Employees who receive tangible personal property (other than cash, a gift certificate, or an equivalent item) as an award for length of service or safety achieve-

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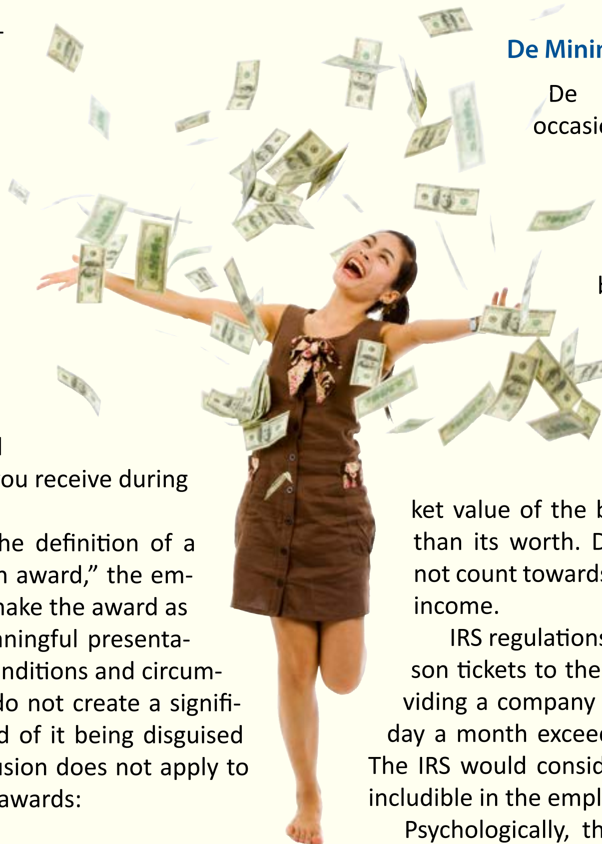
ment can generally exclude these items from income. However, the excludable amount cannot exceed $1,600 ($400 for awards that are not qualified plan awards) for all such awards you receive during the year.



To meet the definition of a "qualified plan award," the employer must make the award as part of a meaningful presentation, under conditions and circumstances that do not create a significant likelihood of it being disguised pay. The exclusion does not apply to the following awards:

- Length-of-service awards for less than five years of service or for employees who have received another length-of-service award during the year or the previous four years.
- Safety achievement awards for managers, administrators, clerical employees or other professional employees.
- Safety achievement awards, if received by more than 10 percent of eligible employees during the year.

De Minimis Benefits

De minimis benefits are occasional small gestures, such as buying the office lunch, bringing a birthday cake in for an employee's birthday, or the occasional dozen doughnuts. The value of such benefits must be small—so small in fact, that determining the fair market value of the benefit is more trouble than its worth. De minimis benefits do not count towards an employee's taxable income.

IRS regulations make it clear that season tickets to the local ball team or providing a company vehicle more than one day a month exceed the de minimis limit. The IRS would consider this type of benefit includible in the employee's taxable income.

Psychologically, the occasional perk can be more effective than an everyday benefit. Employees are surprised, feel that the perk is special and appreciate it more.

Employee benefits are an important part of compensation. For information on structuring your benefits program to reward your employees, please contact us. ■

This information is not intended as tax advice. Before taking any action, consult with your accountant or other qualified tax advisor.

Ebola in the Workplace

As this issue went to press, only a few confirmed cases of Ebola existed in the U.S. What happens if it spreads?

At this point, the U.S. Centers for Disease Control seems confident in the ability of the country's health system to contain and prevent the spread of the disease here. Health insurers, which would have to bear much of the cost of an Ebola epidemic, are watching the situation but do not seem overly concerned.

Exposure to the Ebola virus can cause Ebola hemorrhagic fever, or EHF. This condition is usually marked by fever, muscle pain, headache, and sore throat. The illness progression includes nausea, vomiting, diarrhea, and impaired organ function. In some cases, rash, internal and/or external bleeding, and death may occur.

Workers performing tasks involving close contact with symptomatic individuals with EHF or in environments contaminated or reasonably anticipated to be contaminated with infectious body fluids are at risk of exposure. These workers may include workers in the healthcare, mortuary and death care, airline, and other travel service industries.

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Occupational safety and health law requires employers to provide their employees with working conditions that are free of known dangers. Yet in an October survey by allnurses.com, 74 percent of nurses surveyed said they did not feel prepared to deal with an Ebola outbreak and feared for their safety. The OSHA law also prohibits employers from retaliating against employees for exercising their rights under the law (including the right to raise a health and safety concern or report an injury).

In a *Wall Street Journal* article (October 14, 2014) Stanford Wilson, an Atlanta-based employment lawyer, advised hospitals against forcing employees to work with Ebola patients. He said hospitals could face lawsuits or federal complaints if they did. He also advised against giving hazard pay to workers potentially exposed to the virus, saying that could cause problems for employers. It can create expectations of hazard pay when other risky situations arise.

Employers whose workers may be exposed to the Ebola virus would likely need to comply with provisions from a combination of OSHA standards in order to implement a comprehensive worker protection program.

OSHA's Bloodborne Pathogens standard covers exposure to Ebola virus, as it is transmitted by blood or other potentially infectious materials as defined in the standard. In situations where workers may be exposed to bioaerosols containing Ebola virus, employers must also follow OSHA's Respiratory Protection standard.

Other elements of infection control for Ebola, including a number of precautions for contact-transmissible diseases, are covered under OSHA's Personal Protective Equipment (PPE) standard (29 CFR 1910.132) and the General Duty Clause of the Occupational Safety and Health (OSH) Act of 1970, which requires employers to keep their workplace free of recognized hazards that can cause death or serious harm to workers.

Employers may also be required to follow these and other standards to protect their workers from exposure to chemicals used for cleaning and disinfection. Depending on the specific chemicals used, you may require different or additional personal protective equipment.

In an Ebola outbreak, scientists believe that the first patient becomes infected through contact with an infected animal, such as a fruit bat or primate (apes and monkeys.) Person-to-person transmission follows and can lead to large numbers of affected people.

When an infection occurs in humans, the virus can spread to others in several ways. Ebola is spread through direct contact (through broken skin or mucous membranes in, for example, the eyes, nose, or mouth) with:

- blood or body fluids (including urine, saliva, sweat, feces, vomit, breast milk, and semen) of a person sick with Ebola
- objects (such as needles and syringes) that have been contaminated with the virus
- infected fruit bats or primates.

If you have employees who travel to or are in an area affected by an Ebola outbreak, make sure they do the following:

- Practice careful hygiene. For example, wash hands with soap and water or an alcohol-based hand sanitizer and avoid contact with blood and body fluids.
- Do not handle items that may have come in contact with an infected person's blood or body fluids (such as clothes, bedding, needles, and medical equipment).
- Avoid funeral or burial rituals that require handling the body of someone who has died from Ebola.
- Avoid contact with bats and nonhuman primates or blood, fluids and raw meat prepared from these animals.
- Avoid hospitals in West Africa where Ebola patients are being treated. The U.S. embassy or consulate is often able to provide advice on facilities.
- After they return, employees should monitor their health for 21 days and seek medical care immediately if they develop symptoms of Ebola. ■

Retirement Plan Limits for 2015

Contribution and income limits on certain employer-sponsored retirement plans adjust annually for inflation. The following limits will become effective on January 1, 2015.

401(k)s, 403(b)s and profit-sharing plans

- Maximum salary deferral contribution: lesser of annual income or $18,000
- Additional catch-up contribution for plan participants ages 50+: $6,000
- Annual contribution limit (employer plus employee contributions): $53,000; $59,000 for participants age 50+
- Compensation limit: $265,000 (Compensation your plan can consider when calculating employer matching contributions.)
- The limitation used in the definition of highly compensated employee under Section 414(q)(1)(B) is increased from $115,000 to $120,000.

"Highly compensated individual" for nondiscrimination testing purposes: income exceeding $120,000

Defined benefit plans

- Maximum annual benefit: $210,000 (no change)

SIMPLE Plans (savings incentive match plan for employees)

- Maximum contribution limit: $12,500
- Additional catch-up contribution limit for individuals age 50+: $3,000

Simplified employee pensions (SEPs)

- Minimum compensation amount for participants: $600
- Maximum compensation limit: $265,000

Your firm doesn't have a retirement plan? Adding one can enhance your ability to attract and retain employees. Please call us to discuss your options. ■

Employee Benefits Report

THE INSURANCE 411
What you need to know about insurance

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