IRS Begins Implementation of the ACA “Cadillac Tax” for High-Cost Health Plans

Labor & Employment Law Update

By Kelly Haab-Tallitsch on April 10, 2015

The IRS and Treasury Department recently issued Notice 2015-16 discussing initial approaches to implementing the 40% excise tax imposed on high-cost health plans under the Affordable Care Act (ACA). This notice is the first step in the process leading to final regulations.

Beginning in 2018, the excise tax, also called the “Cadillac Tax,” will impose a 40% tax on the cost of employer-sponsored health plans that exceeds certain thresholds. The tax may affect few plans initially, but is expected to affect many more over time as the cost of health care grows faster than inflation.

Notice 2015 -16 addresses three key areas, including:

- The definition of “applicable coverage”;
- The determination of the cost of applicable coverage; and
- The application of the annual statutory limits.

Benefits considered “applicable coverage” will be subject to the excise tax. The notice addresses several areas that were previously unclear. Most notably, the agencies anticipate that pretax salary reduction contributions made by employees to health savings accounts (HSAs) will be subject to the tax. The ACA statute provides that employer contributions to an HSA are subject to the excise tax, but did not address employee pretax contributions. Retiree coverage, multiemployer plan coverage, executive physicals and health reimbursement arrangements are also expected to be included as applicable coverage.

Notice 2015-16 anticipates excluding from applicable coverage onsite medical clinics that offer only *de minimis* care to employees, provided the care consists primarily of first aid during work hours for treatment of an illness or injury that occurs during work hours. Still undetermined is the treatment of onsite clinics that provide additional services such as immunizations, allergy injections, nonprescription pain relievers, and treatment of work injuries beyond first aid.

Self-insured dental and vision plans (consistent with the exclusion of fully insured dental and vision plans in the statute), employee after tax contributions to HSAs, accident or disability insurance, workers’ compensation, long-term care

AMUNDSEN DAVIS

insurance and possibly employee assistance programs are also expected to be excluded.

What This Means for Employers

The cost of applicable coverage that exceeds the thresholds (currently $10,200 for self-only and $27,500 for family coverage) will be subject to a 40% non-deductible excise tax imposed on the employer. To avoid the tax, employers must continue to analyze health plan costs and explore strategies now to manage future costs.

The anticipated treatment of employee pretax contributions to HSAs will likely have a significant impact on HSA programs. As described, many employer plans that provide for HSA contributions will be subject to the tax as early as 2018, unless an employer limits the amount an employee can contribute on a pretax basis.