New Guidance: A Reminder the Cadillac Tax is Still Looming

Labor & Employment Law Update

By Kelly Haab-Tallitsch on August 31, 2015

The Internal Revenue Service (IRS) recently released its second set of guidance discussing approaches to the excise tax on employer-sponsored health coverage, often referred to as the "Cadillac tax." Starting in 2018, the Cadillac tax imposes a 40% tax on the cost of employer-sponsored health coverage in excess of $10,200 for self-only coverage and $27,500 for family coverage. Intended to target overly-generous employer-provided health plans, the Cadillac tax continues to be one of the most controversial parts of the Affordable Care Act (ACA) as dollar thresholds set in 2010 look increasingly too low for 2018 plan costs.

The Cadillac tax is extremely complex and we don't expect final regulations any time soon. The guidance issued so far describes "potential approaches" that may be incorporated into future regulations. Although this preliminary guidance cannot be relied on, it gives some insight into the direction the agency is going.

Notice 2015-52, released July 30, 2015, addresses employer aggregation and the payment of the tax, among other issues. The guidance suggests that related employers will be treated as a single employer for tax calculation and payment purposes. Annually, employers will calculate the cost of the coverage for each month of the calendar year to see if the 'Cadillac' threshold was exceeded. The employer will then inform the IRS and the coverage provider (insurance company for a fully insured plan) of their share of the tax. For multiemployer plans, the plan sponsor will make the calculations and provide notice to the IRS.

Notice 2015-16, released February 23, 2015, addressed the definition of applicable coverage, the determination of the cost of coverage and application of the annual statutory limits. Most notably, applicable coverage would include both fully insured and self-insured employer-sponsored health plans, regardless of whether the employer or employee pays for the coverage or whether it is paid for with pretax or post-tax dollars. This would include major medical coverage, employer and employee contributions to health flexible spending accounts (FSAs) and health savings accounts (HSAs), health reimbursement arrangements (HRAs), onsite medical clinics, retiree coverage and executive physical programs.

What is the bottom line? Although opponents of the Cadillac tax continue to fight to have the provision amended or repealed, employers should proceed with the expectation that the Cadillac tax will be implemented in 2018 as planned. Employers should review the coverage offered to employees and begin to take steps to reduce exposure to the tax. Further, employers should consider providing input into the regulatory process—directly or through trade groups—by providing comment on the preliminary guidance.