

There's No Escaping Taxable Wages: Are You Improperly Giving Employees Nontaxable Dollars to Purchase Individual Coverage?

Labor & Employment Law Update

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It's that time of year again when we're all settling up with the IRS and hoping and searching for as many deductions as we can. Many employers would like a way to offer employees nontaxable dollars with which they could purchase individual coverage through the marketplace or in the individual private market, without the employer needing to establish its own group health plan (or allowing the employer to terminate the existing group health plan they might be providing).

However, the following prohibitions took effect January 1, 2014:

- Stand-alone HRAs can no longer be used to provide employer-sponsored health coverage to active employees.
- Employer payment plans are prohibited.
- Premiums for coverage elected through the ACA Marketplace or a state-based exchange cannot be paid for or reimbursed through an employer's cafeteria plan.
- Health FSAs can be offered to employees only if those employees are also eligible for the employer's group health plan (major medical plan).

As alternative options, employers can:

- Adopt a small group market plan through the SHOP Marketplace for small employers
- Pay for individual policies for employees with dollars reported as taxable wages and subject to employment taxes and income tax withholding, or
- Reimburse employees with taxable dollars.