May 16, 2013

EMPLOYERS WITH MANDATORY HEALTH COVERAGE

This e-lert should interest employers that mandate coverage under the employer's group health plan, including those that only permit employees to decline coverage if they have alternate coverage. Most employers imposing this requirement do so in order to make sure their employees are covered so that they are more likely to get proper medical care and/or to avoid "adverse selection" by increasing the likelihood that "healthy" or "low risk" employees participate in the coverage pool.

The preamble to proposed regulations issued under IRC § 36B on Friday, May 3, 2013 comments on these practices. Note that the "preamble" is not law, but is an attempt by a regulatory agency to explain its interpretation of a law. A portion of the preamble reads as follows:

"Any arrangement under which employees are required, as a condition of employment or otherwise, to be enrolled in an employer-sponsored plan that does not provide minimum value or is unaffordable, and that does not give the employees an effective opportunity to terminate or decline the coverage, raises a variety of issues. Proposed regulations under section 4980H indicate that if an employer maintains such an arrangement it would not be treated as having made an offer of coverage. As a result, an applicable large employer could be subject to an assessable payment under that section. See Proposed § 54.4980H-4(b), 78 FR 250 (January 2, 2013). Such an arrangement would also raise additional concerns. For example, it is questionable whether the law permits interference with an individual's ability to apply for a section 36B premium tax credit by seeking to involuntarily impose coverage that does not provide minimum value. (See, for example, the Fair Labor Standards Act, as amended by section 1558 of the Affordable Care Act (ACA), 29 U.S.C. 218c(a)). If an employer sought to involuntarily impose on its employees coverage that did not provide minimum value or was unaffordable, the IRS and Treasury, as well as other relevant departments, may treat such arrangements as impermissible interference with an employee's ability to access premium tax credits, as contemplated by the Affordable Care Act."

If you have questions about the issues raised in this e-lert, or about employee benefits in general, please contact an Employee Benefits group member or the GrayRobinson attorney with whom you normally communicate.

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