JacksonLewis

Publications

Health Care Reform Updates: Cafeteria Plan Amendments and Repealed Provisions

By Joseph J. Lazzarotti and Monique Warren

June 2, 2011

After December 31, 2010, the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act (Health Care Reform) established new restrictions on the reimbursement of over-the-counter (OTC) medicines and drug purchases. Health flexible spending accounts (Section 125 Cafeteria Plans) cannot reimburse expenses incurred after December 31, 2010, for OTC drugs purchased without a prescription. Previously, non-prescription OTC drugs could be reimbursed under a health flexible spending account.

The rules governing cafeteria plans generally require plan amendments to take effect on a prospective basis only. However, in IRS Notice 2010-59, the IRS provided that, notwithstanding the general rule against retroactive cafeteria plan amendments, an amendment to conform a cafeteria plan to the Health Care Report OTC requirements that is adopted no later than June 30, 2011, may be made effective retroactively for expenses incurred after December 31, 2010. Therefore, cafeteria plans that allow for OTC drug reimbursements must be amended by July 1, 2011, to comply with the new law.

Recent Changes to Health Care Reform

In April, the President signed the Comprehensive 1099 Taxpayer Protection Act and the Continuing Appropriations Act. The two acts repealed two provisions of the Health Care Reform law significant to most employers.

The “free choice voucher” provision was repealed. This provision of Health Care Reform would have required many employers to offer employees with household incomes under 400% of the poverty line a voucher to purchase coverage through an exchange instead of the employer’s coverage beginning 2014. The voucher amount would have equaled the employer’s contribution to its health plan for which the employer pays the largest portion of the cost of the plan. Employees eligible for vouchers would have been able to use the voucher to obtain health care coverage through an exchange and keep any remaining voucher amount as taxable income.

The other repealed provision required expanded Form 1099 reporting in order to raise approximately $20 billion in tax revenue to offset part of the cost of Health Care Reform. This provision would have required employers to issue a Form 1099 to any vendor for whom the employer purchased $600 or more worth of goods or services in a calendar year. (A similar rule already applies to employers who make payments in excess of $600 to any individual in a calendar year, i.e., to an independent contractor, and remains unchanged.) Employers expressed concern that the expanded form 1099 requirement, if not repealed, would have added significantly to the cost of tax reporting.

Jackson Lewis attorneys are available to answer inquiries regarding workplace developments.

Meet the Authors

Joseph J. Lazzarotti

Principal
Berkeley Heights 908-795-5205
Email

Monique Warren

Principal
New York Metro
White Plains 914-872-8060
Email

functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit https://www.jacksonlewis.com.