

# CLIENT ALERT

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## Guidance from the IRS Highlights Potential Penalties to Employers who Reimburse Employees who obtain Individual Coverage In or Outside of the Marketplace

**Employers who are looking for inventive ways to pay for their employee's health care cannot offer to pay for or assist in paying for individual coverage in lieu of offering an employer sponsored plan. On May 19, 2014, the IRS published the following FAQ reiterating their stance against employers paying for or reimbursing employees who obtain their own coverage.**

**Q1. What are the consequences to the employer if the employer does not establish a health insurance plan for its own employees, but reimburses those employees for premiums they pay for health insurance (either through a qualified health plan in the Marketplace or outside the Marketplace)?**

Under IRS Notice 2013-54, such arrangements are described as employer payment plans. An employer payment plan, as the term is used in this notice, generally does not include an arrangement under which an employee may have an after-tax amount applied toward health coverage or take that amount in cash compensation. As explained in Notice 2013-54, these employer payment plans are considered to be group health plans subject to the market reforms, including the prohibition on annual limits for essential health benefits and the requirement to provide certain preventive care without cost sharing. Notice 2013-54 clarifies that such arrangements cannot be integrated with individual policies to satisfy the market reforms. Consequently, such an arrangement fails to satisfy the market reforms and may be subject to a \$100/day excise tax per applicable employee (which is \$36,500 per year, per employee) under section 4980D of the Internal Revenue Code.

**Q2. Where can I get more information?**

On Sept. 13, 2013, the IRS issued [Notice 2013-54](#), which explains how the Affordable Care Act's market reforms apply to certain types of group health plans, including health reimbursement arrangements (HRAs), health flexible spending arrangements (health FSAs) and certain other employer healthcare arrangements, including arrangements under which an employer reimburses an employee for some or all of the premium expenses incurred for an individual health insurance policy.

DOL has issued a notice in substantially identical form to Notice 2013-54, [DOL Technical Release 2013-03](#), and HHS will shortly issue guidance to reflect that it concurs with Notice 2013-54. On Jan. 24, 2013, [DOL](#) and [HHS](#) issued FAQs that addressed the application of the Affordable Care Act to HRAs.

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***If you would like more information, please do not hesitate to contact our office, your accountant or your legal counsel.***