

The Affordable Care Act and the Church

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In earlier articles, we addressed the changing landscape regarding health care in America following the 2010 passage of the Affordable Care Act (often called “ACA” or “ObamaCare”). Although there is still political rhetoric that the law will be repealed, particularly following the 2016 Presidential elections, the U.S. Supreme Court has upheld the constitutional validity of the ACA and it is currently the law of the land. More importantly, non-compliance with the law as an individual, or as a church, could bring about hefty fines.

Required Insurance

The ACA has both an “Employer Mandate” and an “Employee Mandate.” Simply put, the “employer” mandate requires employers with more than 50 employees to provide health care for its employees. If your church has more than 50 employees, you should seek guidance immediately from a benefits specialist to assure your compliance with the ACA. Employers with less than 50 employees are not required, but may voluntarily, provide health insurance for employees.

On the other hand, unless you fit into one of the narrow exceptions, the “employee” mandate under ACA requires every person to have “minimum essential coverage” health insurance. If as an individual you do not have health insurance, the ACA imposes a fine (called a “shared responsibility payment”) on you. The fine is imposed when you file your tax return. In 2016, the shared responsibility payment increases to \$695 per person (\$2,085 per family) or 2.5% of your household income, whichever is higher. For example, in 2016 a couple pastoring a church and making \$50,000 a year that does not have insurance would potentially owe \$1,390 (\$695 per person) shared responsibility payment.

Group Plans Exception

Although group health insurance plans are required to now provide “minimum essential coverage” health insurance, the tax treatment of group plans currently remains the same as prior to the enactment of the ACA. If a church offers a group health insurance plan to its pastor and staff, the premiums can be paid by the church and such is treated as a non-taxable fringe benefit to the employees, just as under previous law. Therefore, churches are encouraged to consider group plans so as to provide this non-taxable benefit to the church’s employees. However, if the church offers a group health care plan, the church should be careful not to discriminate in who is eligible for coverage.

Individual Premium Reimbursement Plans

Based upon guidance given in [IRS Notice 2015-17](#), after June 30, 2015, an employer/church must stop paying for or reimbursing *individual* health insurance premiums under an employer payment plan (“EPP”). After that date, the ACA imposes a potential penalty of \$100 per day, per participant if health care premium reimbursement arrangements are continued. The IRS has noted that even making these health care reimbursements for individual health insurance policies taxable did not eliminate the potential penalty. Most importantly, a violation of this provision must be “self-reported” by the employer/church.

The process that many churches have used for more than 50 years became subject to a fine by this interpretation of the ACA. While a church can increase the pastor or staff member’s salary to help with their insurance costs, the church cannot require that the salary increase be used only for that purpose. Further, to

assure that the church is not subject to the \$100 per day, per participant fine, no mention of health care or insurance reimbursement should be included on the employee's pay stub or in the minutes of the meeting where the salary increases were approved. Of course, any increase in salary becomes reportable income to the employee and must be included on the employee's Form W-2 as taxable income.

"Group of One" Exception

The original notice dealing with the ACA ([Notice 2013-54](#)) contained an interesting exception to the prohibition against reimbursing *individual* health insurance premiums under an employer payment plan, dealing with an employer/church which has "less than two employees." Many refer to this exception as the "group of one" exception.

Under the "group of one" exception, if an employer/church has only **one employee** (generally a pastor), the church can continue reimbursing health care premiums on a **pre-tax** basis. If the church qualifies for this exception, the church may reimburse the employee's health care premiums and the reimbursement may continue to be a pre-tax benefit and not included in the employee's W-2 compensation. It is as though the church has a group plan for just one person.

Since the provision creates an exception if the employer/church has "less than two employees," the issue has been raised regarding the applicability of this exception if the church has a full time pastor, and a part-time secretary or a part-time janitor. While there is no clear guidance on this issue, it seems logical that one full-time person and a part-time person would be "less than two employees." However, if in this situation health insurance was reimbursed for the full-time pastor and not for the part-time secretary, it is assumed that such would create a discriminatory violation under the law that could bring other penalties. Therefore, without specific guidance from a benefits specialist well versed in the applicability of the ACA, it is suggested that the "group of one" exception only be used if you have **ONLY** one employee.

Please note that in regards to the Affordable Care Act, the Benefits Board presents current information that may change due to new guidance issued by the Internal Revenue Service and further may be subject to unique circumstances or interpretation. For the latest information on the ACA, visit the Resources page of our website at www.benefitsboard.com.

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