



Municipal Law News

December 2014

EMPLOYERS BEWARE: SIGNIFICANT PENALTIES MAY BE ASSESSED FOR REIMBURSEMENT OF INDIVIDUAL HEALTH INSURANCE POLICY PREMIUMS

-Mindi M. Johnson

Employers, including municipal employers, have historically struggled to develop a health insurance benefit program for their employees that provides quality benefits and is cost-effective. After the Health Insurance Marketplace opened for business, many employers recommended that their employees use it to purchase individual health insurance policies, with the promise that the premium costs would be reimbursed by the employer. In fact, such employee reimbursement strategies were aggressively marketed to employers as a solution to reduce costs and comply with the requirements of the Patient Protection and Affordable Care Act ("ACA"). Little did these employers (and marketers) know, such arrangements exposed the employers to significant penalties under the ACA.

In September 2013, the IRS issued Notice 2013-54 that made clear that an employer arrangement that paid for employees' individual health insurance policy premiums on a pre-tax basis violated the ACA. An employer that offered such an arrangement would be subject to a \$100 per day per affected employee penalty (\$36,500 per year, per employee).

In November 2014, the U.S. Departments of Labor, the Internal Revenue Service and the Department of Health and Human Services expanded on IRS Not. 2013-54 by publishing Frequently Asked Questions (the "2014 Guidance"). The 2014 Guidance expressly stated that an employer's provision of a cash reimbursement to employees for their purchase of an individual marketplace policy was subject to the ACA requirements

"without regard to whether the employer treat[ed] the money as pre-tax or post-tax to the employee." The guidance made clear that an arrangement where the employer offered employees cash to reimburse the purchase of an individual marketplace policy can trigger significant penalties.

So what can employers do in light of this guidance? There are strategies to consider to correct any improper reimbursements made during 2014. There are also options for putting in place different arrangements for 2015 that are ACA compliant. Time is of the essence, as penalties continue to accrue and enrollment periods will soon be ending. Please contact Mindi Johnson to discuss your health insurance benefit options at 616.726.2252 or mjohnson@fosterswift.com.

In the interim, be wary of plans or arrangements that may be marketed to you that purport to allow reimbursement of employee health insurance. Just because something seems to be compliant with the ACA, doesn't mean that it is. Please consult with knowledgeable legal counsel before taking any such actions; the consequences of being wrong could be expensive.

- Read the IRS Notice 2013-54:
<http://www.irs.gov/pub/irs-drop/n-13-54.pdf>
- Read the 2014 Guidance:
<http://www.dol.gov/ebsa/faqs/faq-aca22.html>



ARE YOU ATTENDING THE ANNUAL MTA CONFERENCE JANUARY 29, 2015?

Foster Swift is a proud sponsor of this year's MTA Conference in Grand Rapids. Join us on Thursday, January 29 for the Michigan Township Association's themed dinner party. We are sponsoring the Country & Western room. Enjoy a delicious food buffet, line dance to country classics or learn to swing dance from trained instructors. We are looking forward to this evening of fun following a full day of educational sessions. Our attorneys are excited to see you at the conference!

HIGHLIGHTS

- 2015 MTA Expo | Jan. 28 and Jan. 29
- Opening Session | Jan. 28
- MTA's VIP Legislative Reception | Jan. 29
- MTA Themed Dinner Party | Jan. 29
- MTA Annual Meeting | Jan. 30

AT THE PODIUM

Anne Seuryneck and Mike Homier will present this year at the MTA Conference in Grand Rapids January 29, 2015. Anne will present on Library Law and Mike will discuss Special Assessments. Are you planning on attending? Register Here: <http://www.michigantownships.org/conference.asp>

CONGRATULATIONS!

Congratulations to these Foster Swift municipal law attorneys named 2015 Top Lawyers by *dbusiness*: **Michael Blum, John Kamins and Brian Renaud.** Learn more: <http://bit.ly/1zgly6u>

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