

July 29, 2015

Health Care Reform—Employer Payment Plans FAQs

In February 2015, the IRS issued **IRS Notice 2015-17**, which provides guidance on Employer Payment Plans (EPPs), including relief from penalties for small employers until **June 30, 2015**. **IRS Notice 2015-17** also clarifies some issues from prior IRS publications, including primarily **Notice 2013-54** (which you can read more about [here](#)).

Generally, the IRS has stated clearly that employers create “group health plans” when they establish programs to pay (or reimburse) employees’ premiums for individual health insurance policies, i.e., policies purchased on the individual market from insurance companies (issuers) directly, through a broker or agent, or through a public exchange [i.e., state or federal Health Insurance Marketplace under the Affordable Care Act (ACA)]. These reimbursement arrangements are sometimes called EPPs. EPPs have been permitted since 1961.

However, in **Notice 2013-54** the IRS stated that EPPs violate the Affordable Care Act’s “market reforms” by placing an annual limit on essential health benefits. This prohibition on EPPs became effective **January 1, 2014**. Therefore, the practice by many small employers, including many churches, of paying premiums for employees’ individual health insurance policies (or reimbursing the employee for paying those premiums) on a nontaxable basis became prohibited under the ACA. Supplemental guidance and FAQs from the IRS clarify that even reimbursement or payment of individual policy premiums for employees on a *taxable* basis constitutes an EPP—and is also now prohibited.

Notice 2015-17 helps clarify some open questions about these practices that remained. The frequently asked questions (FAQs) below address three points that may be of particular interest to United Methodist Church (UMC) employers.

Q: Is there any relief for churches and other UMC employers that have not yet terminated their employer payment plans?

A: Relief is no longer available, as described below.

- **No—for applicable large employers¹** [ALEs, i.e., employers with at least 50 full-time equivalent employees (FTEEs)].
- **Yes—limited relief for small employers** (fewer than 50 FTEEs). *But this relief expired June 30, 2015 and applies only to EPP coverage in effect between January 2014 and June 30, 2015.*

Explanation: Most UMC local churches, many annual conference offices and other UMC employers are considered “small employers” under the ACA definition. As small employers, they have the limited relief described above.

For small employers only, the IRS will not assess the excise tax for failing to comply with ACA market reform requirements with respect to EPPs for all of 2014 and the first six months of 2015. So, many UMC employers who first learned of the new restrictions on EPPs during 2014 and terminated their EPPs between January 1, 2014 and July 1, 2015 may qualify for this relief. A small employer is defined for these purposes as an employer that is not an applicable large employer under the ACA.

Notice 2015-17 also states that a small employer eligible for this relief does *not* need to file an IRS *Form 8928* (for failing to satisfy the market reform requirements of the ACA) if the small employer had an EPP.

Q: Can an employer avoid ACA penalties by providing an employer payment plan on an *after-tax* basis?

A: No. Notice 2015-17 clarified a point that had earlier been uncertain: providing reimbursements or payments pursuant to an EPP on an after-tax basis will *not* avoid the ACA penalties.

Explanation: In Notice 2015-17, the IRS distinguishes a point made in an earlier guidance (Revenue Ruling 61-146) that suggested employer reimbursements of premiums for non-employer-sponsored medical insurance are excluded from the employee’s income under the tax code. Notice 2015-17 explains: The ACA imposes requirements on group health plans that an EPP cannot satisfy; thus an employer that continues such an arrangement will be subject to the penalties created by the ACA, *regardless of whether the EPP payment or reimbursement of premiums is post-tax or pre-tax.* On the

¹ An applicable large employer (ALE) is an employer that employed an average of at least 50 full-time employees (including full-time equivalent employees) during the preceding calendar year (e.g., employees in 2013 are counted for the 2014 tax year).

For 2014 and 2015: To calculate total full-time employees (including full-time equivalent employees), an employer may pick a consecutive six-month period in 2013 to determine its status for 2014, and may pick a consecutive six-month period in 2014 to determine its status for 2015.

other hand, if an employer simply increases pay for one or more employees without requiring that the employee(s) use the money to buy a health plan (i.e., the increase in compensation is not contingent upon obtaining health coverage), then such an action would *not* trigger ACA penalties because the compensation increase is unrelated to any group health plan.

Q: Does the 2015-17 guidance mean that a church cannot pay for an “individual health insurance policy” for any employee after June 30, 2015?

A: Yes, in most cases—assuming more than one employee is involved.

Exception: A church may be exempt from the EPP penalty **if only one employee is involved**. Notice 2015-17 clarified the IRS’ position that an EPP with fewer than two participants who are “current employees” is exempt from the ACA’s “group health plan” market reform requirements. *Thus, if a church had only one employee for whom it paid or reimbursed premiums for individual health insurance policy, the ACA requirements and penalties would not apply.* **Note:** This exception is of limited value for UMC employers, unless they have only one employee for whom they would like to provide such assistance (presumably, the clergyperson but no lay employees). *Furthermore, it is possible that a court in a future ruling might disagree with the IRS’ position on this exception.* The IRS stated clearly that an employer with more than one current employee cannot maintain separate EPPs for each employee; the IRS would treat the two EPPs as one group plan—subject to the EPP prohibition and other ACA market reforms. Any employer contemplating this one-employee exception should keep in mind the nondiscrimination rules under Section 105(h) of the Code, which would prohibit offering an EPP to only the clergy and not offering it to other similarly situated employees, particularly lower-paid employees.

Questions and Information

A template letter that annual conferences can adapt to send to local churches is provided [here](#) and on Wespath’s [health care reform web page](#). If you have questions, please send your inquiries to healthcarereform@wespath.org. General information about health care reform is available from the federal government at www.healthcare.gov. Additional information about employer payment plans is available at www.irs.gov.

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