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Legislative Update

The following information, provided by Employee Benefits Institute of America, is being sent as a courtesy to keep you informed on the status of the Health Care initiatives taking place in our government.

IRS ISSUES MORE GUIDANCE ON THE SMALL BUSINESS HEALTH CARE TAX CREDIT, INCLUDING TRANSITION RELIEF FOR 2010 TAXABLE YEAR

[IRS Notice 2010-44 (May 17, 2010)]

Available at Sub-Titles <http://www.irs.gov/pub/irs-drop/n-10-44.pdf>

The IRS has issued additional guidance on the small business health care tax credit that was created by recent health care reform legislation. The guidance focuses on how the tax credit works for taxable years beginning before January 1, 2014 (different rules apply for later taxable years). To be eligible for the tax credit for taxable years beginning in 2010 through 2013, an employer must (1) have fewer than 25 full-time equivalent employees (FTEs), (2) pay average annual wages of less than \$50,000 per FTE, and (3) maintain a qualifying arrangement under which it contributes an amount equal to a uniform percentage of not less than 50% of the premium cost of health insurance coverage for employees (referred to as the "uniformity requirement"). Here are highlights of the guidance:

Determining FTEs and Average Annual Wages. The guidance describes the individuals who are disregarded when determining an employer's FTEs and average annual wages--namely, business owners and partners, their family members and dependents, and seasonal workers working 120 or fewer days in the year. The guidance details alternative equivalencies an employer may use instead of actual records of hours worked (and hours for which payment is made or due). The days-worked equivalency credits an employee with eight hours for any day, and the weeks-worked equivalency credits 40 hours for each week, during which the employee would otherwise be credited with at least one hour of service.

Calculating Premiums Paid. For taxable years beginning in 2010 through 2013, the maximum credit is 35% (25% for tax exempts) of premium payments for health insurance coverage made by an eligible small employer under a qualifying arrangement. Premiums paid on behalf of business owners, partners, and their family members generally are not counted (although premiums for seasonal workers are counted). Premiums paid by an employee, including those paid through pre-tax salary reduction, are not counted in determining the tax credit. Health insurance, for this purpose, includes stand-alone dental or vision, and other limited-scope coverage such as long-term care, specified disease or illness, hospital indemnity, and Medicare supplemental. Different types of health insurance plans are not aggregated, so the employer must separately satisfy the qualifying arrangement criteria for each type.



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(For example, if an employer pays 50% of major medical premiums and 40% of stand-alone dental plan premiums, the dental premiums are not paid through a qualifying arrangement and are not counted toward the tax credit.) An employer's premiums are capped at the amount of the average premium for the small group market in the State (or an area within the State) where the employer offers coverage. This average premium cap is an overall cap for all health insurance coverage, and is not applied separately to each type of coverage the employer provides.

No Reduction for State Tax Credits or Subsidies. Some States pay tax credits or premium subsidies, either directly to an employer or directly to an insurance company on the employer's behalf. These generally do not reduce the amount of an employer's premium payments for determining whether a qualifying arrangement exists or for calculating the employer's small business health care tax credit, but the resulting tax credit cannot exceed the employer's net premium payments.

Transition Relief for 2010. Because this tax credit applies to portions of 2010 prior to the enactment of health care reform legislation, transition relief is provided to make it easier for employers to satisfy the uniformity requirement (described above). An employer will meet the uniformity requirement for the 2010 taxable year if it contributes at least 50% of the premium for single (employee-only) coverage for each enrolled employee, even if the employer doesn't pay the same percentage of premiums for each employee. And if an employer offers coverage that is more expensive than single coverage (such as family coverage), it will meet the uniformity requirement if the amount it pays for each employee is at least 50% of the premium for single coverage (even if that amount is less than 50% of the premium for an employee's more expensive coverage).

As always, we'll keep you posted of significant developments as they occur.

If you have any questions, please contact your HARDEN Employee Benefits Account Manager.