



## IN THIS ISSUE

- New Tax Season, New IRS Publications
- Sick of Paid Sick Leave Mandates? Not in New Jersey!
- How Does your HRA or Employer Wellness Program Incentives Affect Individual Mandate Penalties? Find out here!
- More Exemptions from the Individual Mandate Penalty



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## INTERNAL REVENUE SERVICE UPDATES PUBLICATIONS FOR 2013 TAX RETURNS

Recently, the Internal Revenue Service (IRS) issued updated publications for use in preparing 2013 tax returns. These publications contain helpful, basic information about Health Savings Accounts (HSA), Flexible Spending Accounts (FSA,) fringe benefits and medical, dental and child/dependent care expenses.

### No Action Required

**Employers are encouraged to review these publications if they have questions regarding these tax-favored accounts or benefits. For more information, see:**

IRS Publication 5137 (Fringe Benefit Guide) (Jan. 2014) available at:  
<http://www.irs.gov/pub/irs-pdf/p5137.pdf>

IRS Publication 969 (Health Savings Accounts and Other Tax-Favored Health Plans (for 2013 Tax Returns)) available at:  
<http://www.irs.gov/pub/irs-prior/p969--2013.pdf>

IRS Publication 502 (Medical and Dental Expenses (for 2013 Returns));  
IRS Publication 503 (Child and Dependent Care Expenses (for 2013 Returns)) available at:

[Publication 502](#)

[Publication 503](#)

## NEWARK SOON TO REQUIRE PAID SICK LEAVE

The Municipal Council of Newark, New Jersey, recently passed an ordinance that will require employers to provide paid sick leave to their employees. Mayor Luis A. Quintana is expected to sign the Ordinance in the coming weeks. The law will become effective 120 days after it is signed. Newark will be the second city in New Jersey to require paid sick leave; the Jersey City law became effective January 24, 2014.

### Highlights of the Paid Sick Leave Ordinance

- Full- and part-time employees of private-sector employers will begin to accrue leave immediately upon being hired
- Employees are eligible for paid sick leave if working at least 80 hours per year within the city of Newark
- Employees are eligible to use the leave after their 90th day of employment
- Sick leave will accrue at a rate of one hour for every 30 hours worked
- Employees who work for employers with 10 or more employees and those who work for employers of any size in the child care, home healthcare, and food service industries will be able to accrue a maximum of 40 hours of sick leave per calendar year
- Employees who work for employers with less than 10 employees and who do not work in the aforementioned industries will be able to accrue a maximum of 24 hours of sick leave per calendar year
- Year-to-year carryover is available up to a maximum of 40 hours
- No cash-out value is required
- Previous employment with the same employer is credited towards accrual and 90<sup>th</sup> day of employment prior to use of paid sick leave if the gap in employment is six months or less
- An eligible employee can use sick leave for his or her own or a family member's mental or physical illness, injury, or health condition; to care for a child whose school or daycare has been closed due to a public health emergency; or, to care for a family member if the family member would jeopardize the health of others in a community due to exposure to a communicable disease
- Covered employers will be required to distribute to all employees and to post in the workplace a notice of rights "as soon as practicable" after the Ordinance takes effect. Employers will be required to provide new employees with the notice at the time of hire

### Action Required

Employers with employees in Newark should review the law and be prepared to offer paid sick leave to employees if their current leave policy (prior to this new law) does not mirror the new paid sick leave law stated here.

**For more information, see:**

<https://newark.legistar.com/LegislationDetail.aspx?ID=1518218&GUID=22C72D79-0A2C-4DF9-A597-9FF29C980CF6&Options=&Search=>

# NEW GUIDANCE ON HEALTH REIMBURSEMENT ARRANGEMENTS AND WELLNESS INCENTIVES TREATMENT UNDER HEALTH CARE REFORM'S INDIVIDUAL MANDATE

Recently, the Internal Revenue Service (IRS) issued proposed regulations addressing the treatment of Health Reimbursement Arrangements (HRA) and wellness incentives under the individual mandate. Pursuant to federal health care reform, in 2014, individuals who do not have minimum essential coverage could be subject to a tax penalty (payable on their 2014 tax returns should an exemption not apply). One exemption available is a financial hardship exemption which includes that the individual will not be subjected to a tax penalty if the employer-provided coverage would require an employee contribution of more than eight percent of household income. These latest regulations address how HRA contributions and wellness incentives are considered for purposes of this exemption. Highlights are below.

## HRA Contributions

- Amounts made available for the current plan year under an HRA integrated with a medical plan would be taken into account in determining (i.e., they would reduce) the individual's required contributions if the amounts can be used to pay premiums for the employer-sponsored plan
- HRA amounts that may only be used for cost-sharing would not be taken into account when determining affordability (HRAs generally must be integrated with an eligible employer-sponsored plan in order to be health care reform compliant)

## Wellness Incentives

- Incentives under a nondiscriminatory wellness program that affect premiums are treated as earned in determining (i.e., they would reduce) the individual's required contributions to the employer-provided plan
  - Only if they relate to tobacco use. Incentives that do not relate to tobacco use are treated as not earned for this purpose

## No Action Required

Employers should be aware of the various individual mandate exemptions, as well as the rule, for purposes of educating employees.

For more information, see: <http://www.gpo.gov/fdsys/pkg/FR-2014-01-27/pdf/2014-01439.pdf>

## MORE EXEMPTIONS FROM THE INDIVIDUAL MANDATE PENALTY

The Internal Revenue Service (IRS) recently issued Notice 2014-10, adding another exemption to the long list of exemptions from the individual mandate penalty. The latest exemption specifically addresses the situation where the individual enrolls in certain government-sponsored, limited-benefit health coverage not knowing it would not be considered minimum essential coverage. Highlights are below.

- The exemption applies to those enrolled in the following Medicaid or Medi-Cal Services: family planning services, tuberculosis-related services, pregnancy-related services, emergency medical conditions. The exemption also applies to certain Section 1115 demonstration projects, coverage for medically needy individuals, space available care, or line-of-duty care
- The individual did not know when enrolling in coverage in 2014 that such coverage is not minimum essential coverage
- A shared responsibility payment (i.e., individual mandate penalty) is not imposed with respect to an individual for months in 2014 when the individual has coverage under one of the above-stated government plans
- Relief provided applies only for determining a taxpayer's individual shared responsibility payment for not maintaining minimum essential coverage in 2014
- Solely for the purpose of determining whether a period without coverage qualifies as a short coverage gap, an individual will be treated as having minimum essential coverage for any month in 2014 when that individual is eligible for the transition relief provided by this notice

### No Action Required

Employers should be aware of the various individual mandate exemptions, as well as this rule, for purposes of educating employees.

For more information, see: <http://www.irs.gov/pub/irs-drop/n-14-10.pdf>

## QUESTION OF THE MONTH

**Question:** Do insurance carrier/issuers enrolling employees in ACA Qualified Health Plans (QHPs) have to enforce the Federally-Facilitated FF-SHOP minimum participation requirement for plan years beginning in 2014?

**Answer:** SHOP regulations require carriers/issuers in the FF-SHOPs to use the FF-SHOP minimum participation rate methodology and the default 70% rate that is set forth in CMS regulations at 45 CFR 155.705(b)(10) (or any alternative defined minimum participation rate for a State-based Exchange as permitted by CMS regulations and posted on “Reg-tap” and HealthCare.gov).

However, if a carrier/ issuer conducting direct enrollment in the FF-SHOP in 2014 demonstrates to CMS that it would be operationally impracticable for it to apply the FF-SHOP minimum participation rate required by CMS regulations, CMS would not take any adverse action for failing to impose the applicable minimum participation rate during the period that the carrier/issuer is implementing capability to comply with CMS regulations. If it would be operationally impracticable to apply the FF-SHOP minimum participation rate, carrier/issuers would have the following options for plan years beginning in 2014:

1. Do not impose a minimum participation rate
2. Use a minimum participation rate and methodology that is allowable in the relevant state small group market. If this option is used, the carrier/issuer may not deny enrollment to an employer group before contacting the SHOP Employer Call Center (1-800-706-7893 or TTY: 1-800-706-7915) for a final determination of eligibility. Issuers may not deny enrollment to any employer group that is eligible to enroll in SHOP coverage and that meets the FF-SHOP minimum participation rate. The FF-SHOP will make a final determination in such cases based on the minimum participation methodology and rates set forth in CMS regulations, and as further interpreted through guidance posted on Reg-tap and Healthcare.gov

Source: [https://www.regtap.info/faq\\_view.php?i=601&u=24708&a=24](https://www.regtap.info/faq_view.php?i=601&u=24708&a=24)