

Can An Employer Exclude Certain Classes of Employees From Health Plan Coverage?

Problem:

As employer health plan costs continue to increase, many employers are considering not only whether to cutback on health benefits coverage, but also whether to exclude certain employees from the company's plan altogether. In addition to cost, group health benefits are not a significant factor in recruiting or retaining employees in some industries, where increases in wages are the predominant concern.

Can an employer legally provide group health plan coverage to only certain employees and exclude others?

Solution:

Subject to the restrictions discussed below, in general, employers may exclude classes of employees from health plan coverage, provided that the employer does not exclude employees based on categories protected by law (i.e., race, color, religion, sex, national origin, age, or disability) or based on a health status factor.

Fully Insured Health Plans -- An employer sponsoring a fully insured health plan must discuss with its insurance carrier whether the carrier is limited in restricting eligibility by state insurance regulation. For example, an insurance carrier may be prohibited from providing an employer with a group health plan unless all full-time employees are eligible for coverage under the plan. Although the employer is not directly subject to such regulation, it may have the practical effect of restricting which employees the employer may exclude from coverage. Even in cases where state insurance laws do not dictate eligibility requirements, some insurance carriers may impose coverage requirements that impact an employer's ability to exclude employees from coverage. However, such policy provisions are typically negotiable with the carrier. An employer sponsoring a fully insured health plan should also review its policy coverage requirements before excluding employees from health plan coverage.

Self-Funded Plans -- Employers sponsoring self-funded health plans need not be concerned with state insurance regulations but should ensure that the plan satisfies Internal Revenue Code discrimination testing before excluding employees from the plan. The Internal Revenue Code prohibits employers sponsoring self-funded plans from discriminating in favor of highly compensated employees with regard to eligibility for health benefits. Highly compensated employees are generally considered to be owners, certain shareholders and the top 25% highest paid employees.

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