



Health Care Reform: Non-Discrimination Rules

IRS Section 105 non-discrimination rules that already applied to self-insured plans will apply to fully-insured plans beginning at renewal after 9/23/10. All group health plans (unless grandfathered) will need to conduct specific tests to ensure these nondiscrimination requirements are met. The non-discrimination rules require that a plan not discriminate in favor of highly compensated employees or key employees with regard to eligibility, contributions and benefits.

Highly Compensated Employee (HCE)= an officer of the company, a more than 5% shareholder, an employee earning more than \$110,000 in 2009 or 2010, or the spouse/dependent of any of these individuals. An officer of the company is any officer who makes decisions on behalf of the entire company that would affect the profitability of the entire company.

Key Employee= an officer with compensation greater than \$160,000 in 2009 or 2010, a more than 5% owner, or a more than 1% owner with compensation greater than \$150,000.

Non-Discrimination Tests:

1. **Eligibility Test:** The plan must benefit 70% or more of all employees, or 80% or more of all eligible employees if at least 70% of all employees are eligible to benefit under the plan. Generally, a plan must make all benefits available to HCEs are available to all other employees.
2. **Contributions and Benefits Test:** The plan cannot discriminate in favor of HCEs with regard to the availability and use of benefits, meaning that participants must be given equal opportunity to select benefits, contributions must be made in a nondiscriminatory manner, and benefits must be utilized proportionately. Therefore, the plan cannot discriminate in actual operation in addition to not discriminating in its design.
3. **Key Employee Concentration Test:** The benefits provided to key employees cannot exceed 25% of the total of benefits provided to all employees under the plan.

Failing Non-Discrimination Test: If a plan fails any of the non-discrimination tests, HCEs/key employees may be taxed on the benefits received. Plans may also be subject to a \$100 per day excise tax for each instance of failure. The Plan must also be modified to become compliant in order to be a valid plan.

Conducting Non-Discrimination Tests: Non-discrimination tests can be conducted before the start of the plan year or at any time during the plan year. However, keeping these requirements in mind when establishing how a plan will be designed and administered will help avoid headaches later. The plan can be established to not discriminate from the beginning by ensuring the eligibility and contribution requirements are consistent for all employees. When employees make their elections, the overall employee census and employee elections can be reviewed to ensure the benefits and key employee concentration requirements are actually met. Failures can be corrected early to avoid making any benefits taxable.

In response to the Patient Protection and Affordable Care Act and the Health Care and Education Tax Credit Reconciliation Act, collectively known as Health Care Reform, Kistler Tiffany Benefits has formed a Health Care Reform committee to monitor legislation and provide guidance to our valued clients. Our team is creating user-friendly tools and resources, as well as establishing best practices for our clients in regards to the application of this legislation. For more information regarding our services, please contact us at reform@ktbenefits.com.

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