

Non-Discrimination Rules

High-Level Reference Information

As of July 2, 2010



On March 23, 2010, the Patient Protection and Affordable Care Act (PPACA) was signed into law. There are several benefit changes that are required to take effect for new and non-grandfathered renewing plans on or after September 23, 2010, including the fact that fully insured groups may no longer discriminate in favor of highly compensated individuals for eligibility and benefits.

While each business owner or benefits administrator must work directly with their own tax advisor to certify that their new or non-grandfathered plans do not discriminate per PPACA, the following is a high-level reference guide that offers some information with regard to the discrimination rules themselves.

What is considered discriminatory?

It is anticipated that the federal government will issue additional guidance on this topic. Until then, under section 105(h) of the Internal Revenue Code a plan is considered discriminatory if eligibility for, or benefits provided under, the plan favor highly compensated individuals (HCI). A "highly compensated individual" means an individual who is any of the following:

- One of the five highest paid officers
- A shareholder who owns 10% in value of the stock of the employer
- Among the highest paid 25% of all employees

To be non-discriminatory with respect to eligibility, the plan must meet one of the following tests:

- 1) The plan must benefit at least 70% of all employees.
- 2) The plan must benefit at least 80% of all employees eligible under the plan if at least 70% of all employees are eligible.
- 3) The plan must benefit a classification of employees determined by the IRS to not discriminate in favor of HCIs. This determination is based on "the facts and circumstances" and also considers whether the plan benefits a percentage of employees who are not HCIs which is at least 70% of the percentage of HCI's benefiting under the plan.

For purposes of the above tests, the following employees are excluded:

- Employees who have not completed three years of service
- Employees who have not attained age 25
- Part-time or seasonal employees as defined by the regulations
- Worker's covered by collective bargaining agreements in some cases
- Non-resident aliens with no U.S. source income

To be non-discriminatory with respect to benefits, all benefits provided for participants who are HCIs are provided for all other participants.

Talk With Your Tax Advisor to Determine Eligibility

There are many subset components to all of the above rules. Further, different rules may apply if coverage is run through a section 125 cafeteria plan. Effective plan years on or after January 2, 2011, Section 9022 of PPACA exempts certain small employers (100 or less employees) from traditional Section 125 discrimination testing if the employer allows all employees with 1,000 hours of service to participate (with exceptions) and meets certain minimum contribution requirements. These rules may change in accordance with future regulations. Businesses should talk with their tax advisor regarding these complex rules and tests.

Employers to Certify Compliance

In response to PPACA, Trustmark will require employers to certify as to their compliance with these rules.

This material may not be considered legal, tax or compliance advice.