



Affordable Care Act Health Insurance Premium Rebates

If your company maintains a fully insured group health plan, it may have received - or will soon receive - a check from its insurer under the requirements of the so-called "85/15 Rule" of the Patient Protection and Affordable Care Act, which sets a 15 percent threshold (20 percent for certain smaller employers) on the amount of premium dollars insurers can spend on administrative costs (salaries, sales and advertising). Under the 85/15 Rule a health care insurer that uses less than 85 percent (80 percent for certain smaller employers) of the health care premium dollars it receives (calculated on a state-by-state basis) to provide medical care (doctors and hospital bills, as well as activities designed to improve health care quality) must either rebate the percentage difference between what it did spend and 85 percent (80 percent for certain smaller employers) to the covered employers by August 1, 2012, or apply the rebate amount to the employers' health insurance premiums due on or after August 1.

If your company receives an 85/15 Rule rebate check, unless its fully insured medical plan is funded by a trust, the company must use the funds in one of two ways. It may use the rebate to pay future premium costs under the plan, or it may retain a portion of the rebate and share the remaining portion with the employees covered under the plan. If the company elects to use the rebate to pay future premiums, the payment should be allocated proportionately to reduce future employee and employer premiums, according to the proportion of the premium amounts paid by the employees as a group and the employer. If the company does not use the rebate to reduce future premiums, it should allocate the funds between the company and the participating employees, also on the basis of the respective proportion of the premiums

paid by each. If an employer pays a portion of the rebate to its employees, and if the employee contributions were originally paid on a pre-tax basis under a cafeteria plan salary-deferral arrangement, or if employees took an income tax deduction for their premium payments, these rebate payments made to them would constitute taxable compensation.

Employers that receive an 85/15 Rule notice from their insurers should promptly make their determination and notify the employees participating in their health care plans, in writing, as to whether their insurer has issued a cash rebate or reduced certain future premium amounts, and in either case, the effect on participants.

U.S. Department of Labor [Technical Release No. 2011-04](#) and Internal Revenue Service FAQs [questions and answers](#) contain further information on a company's obligations under the 85/15 Rule.

If you have any questions or need assistance with your employee notifications, please contact [Michelle La Mar](#) at mlamar@loeb.com or [Dana Scott Fried](#) at dfried@loeb.com.

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