THE REGULATORY IMPLICATIONS OF EMPLOYEE ON-SITE HEALTHCARE

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It is becoming increasingly common for employers across a broad spectrum of industries to offer on-site access to healthcare as an employment benefit, often as a supplement and/or complement to employer-subsidized health insurance plans. A 2018 survey by Mercer and the National Association of Worksite Health Centers indicated that 33% of US employers with 5,000 or more employees offered general medical worksite centers in 2017, up from 24% in 2012.[1] The medical services offered at such on-site centers can range from work related occupational health services to primary care and preventative health services. On-site centers allow employers to reduce overall medical costs, offer convenient access to healthcare for employees, and improve the health and productivity of employees.

Despite all of the positives associated with on-site health centers, employers should be aware of potential regulatory issues associated with offering on-site centers in conjunction with employer-sponsored high-deductible health plans. In particular, utilization of on-site health centers has the potential to jeopardize an employee's status as an "Eligible Individual" for purposes of contributing to an HSA[2] under U.S. Code § 223(c)(1)(A). The Internal Revenue Service has provided valuable insight into this issue in IRS Notice 2008-59, which states, in pertinent part:

> *An individual will not fail to be an eligible individual under § 223(c)(1)(A) merely because the individual has access to free health care or health care at charges below fair market value from an employer's on-site clinic if the clinic does not provide significant benefits in the nature of medical care (in addition to disregarded coverage or preventive care).*

Therefore, in order to protect an employee's Eligible Individual status, it is necessary for employers to (i) limit the services available at on-site health centers to those that are not "significant benefits" or that satisfy another exemption, such as preventative care; and/or (ii) ensure that any service available to employees at an on-site center is not priced below fair market value ("FMV").

[1] William M. Mercer, Ltd. and National Association of Worksite Health Centers, *Worksite Medical Clinics: 2018 Survey Report.*

[2] A Health Savings Account (*i.e.*, an HSA) is a federally allowed savings account, offered in conjunction with a High Deductible Health Plan, that allows the user to set aside pre-tax monies for the purpose of purchasing or reimbursement for the purchase of qualified medical expenses, including deductibles, copayments, coinsurance, and some other expenses. Such HSAs are frequently offered by employers as a component of an overall benefits package to the benefit of their employees.

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Given the significant benefits associated with employer-sponsored on-site health centers, the prevalence of such health centers, both within the healthcare industry and beyond, is expected to increase. However, a lack of awareness of the pertinent regulatory issues could have disastrous consequences for the very same individuals that the on-site health centers are intended to benefit. Before embarking on a journey towards self-subsistent healthcare, employers should consult both legal counsel and an independent valuation expert in order to mitigate regulatory risks. With first-hand experience valuing the broad spectrum of services offered by on-site health centers, HealthCare Appraisers can help guide your organization towards achieving regulatory compliance.