



## **IRS Temporarily Suspends Compliance With Non-Discrimination Rules**

Insights  
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On December 22, 2010, the Internal Revenue Service, with the agreement of the United States Departments of Treasury, Labor, and Health and Human Services, announced that non-grandfathered, fully-insured group health plans will not be required to comply with the non-discrimination requirements of Internal Revenue Code until after regulations or other administrative guidance has been issued. Until such time, any sanctions for failure to comply do not apply.

The Patient Protection and Affordable Care Act enacted on March 23, 2010 added the provision that group health plans (other than grandfathered plans) must satisfy the non-discrimination requirements of Internal Revenue Code §105(h). Historically, these rules only applied to self-insured group health plans. Code §105(h) prohibits a plan from discriminating in favor of "highly-compensated individuals" with regard to both eligibility and benefits. If a plan fails to comply with §105(h), highly compensated individuals may lose a tax benefit and the plan or plan sponsor may be subject to an excise tax, civil monetary penalty, or a civil action to compel it to provide nondiscriminatory benefits.

Because regulatory guidance is essential to the operation of the statutory provisions, the Treasury Department and the IRS, as well as the Departments of Labor and Health and Human Services, determined that compliance with the non-discrimination requirements of Code §105(h) should not be required. Thus, any sanctions for failure to comply do not apply until after regulations or other administrative guidance of general applicability have been issued.

For more information contact any member of the Fisher Phillips Employee Benefits Practice Group.

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