

# What you need to know about. . .

## Cash in Lieu of Benefits

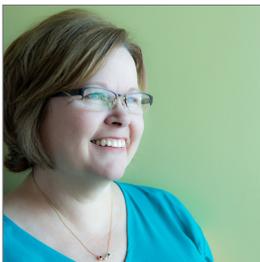
Clients frequently express a desire to offer their employees who waive health coverage some sort of cash compensation in return. The logic goes that those employees receive a lesser benefit from you than their coworkers and that paying them a little extra in return is more equitable for all. This is commonly known as “cash in lieu of benefits” or an “opt-out payment,” and it makes a lot of sense if you have a number of employees who choose to get their coverage elsewhere.

Unfortunately, like many employee benefits matters, it’s not that simple. Although opt-out payment options are generally allowed, our experience has been that they present a number of compliance challenges, including:

- **Cafeteria plan required.** Opt-out payments must be offered through a cafeteria plan. Otherwise, employees who elect group health plan coverage (instead of opting out) must be treated as receiving taxable income in the amount of cash they could have received for waiving coverage. It’s also important to note that although employees who enroll in health coverage don’t have to pay taxes on their premiums, those who elect the opt-out payment will have to pay taxes on it.
- **Other group coverage required.** The opt-out payment should be offered only to employees who you verify have enrolled in other group health coverage, such as that offered by a spouse’s or parent’s employer. In other words, it should not be given to employees who have no coverage or who have an individual policy, through the Exchange or otherwise.
- **Effect on affordability calculation.** For employers subject to the ACA’s employer mandate, the opt-out amount must be added to the employee’s cost for employee-only coverage to determine whether the coverage offered meets an affordability safe harbor. For example, if an employee’s cost of self-only coverage is \$100 and the opt-out amount is \$60, her cost of coverage for the purpose of the affordability calculation would be \$160. This could result in an employer owing penalties if that amount is more than 9.86 percent of the employee’s monthly income (in 2019).
- **Uniform opt-out amount.** The same opt-out amount should be offered to all eligible employees. In other words, you can’t vary opt-out payments based on the cost of the coverage that the individual employee is waiving (i.e., single vs. family). Employers are also prohibited from offering the opt-out option only to employees whom they anticipate having an adverse effect on premiums, such as those with high claims or who are eligible for Medicare.

### Final Thoughts

Our experience is that cash in lieu of benefits are truly valued by employees. While there are compliance concerns, it may be worth the effort to discuss your options for developing such a program with a benefits attorney. This is necessary to ensure that your program does not result in taxable income to employees or penalties to the employer. I am also available to discuss this issue from a general and practical perspective.



The Miller Group’s compliance director Julie Athey, is a licensed attorney with many years of experience in interpreting state and federal employment laws such as ERISA, COBRA, the ACA, FMLA and ADA. She frequently writes and speaks on legal and regulatory topics and has earned a reputation for being able to simplify complex concepts. If you have questions, feel free to contact Julie at [juliea@millercare.com](mailto:juliea@millercare.com).