# Benefits BULLETIN

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## IRS Invites Comments on Cadillac Tax Implementation

On Feb. 23, 2015, the Internal Revenue Service (IRS) issued Notice 2015-16 to describe potential approaches for a number of issues related to the Affordable Care Act's (ACA) so-called Cadillac tax. The IRS is seeking comments as it begins developing guidance for the implementation of the Cadillac tax. Public comments may be submitted to the IRS until May 15, 2015.

Proposed or final regulations have not yet been issued on the ACA's Cadillac tax provision. This notice is intended to invite comment as guidelines are assembled, and taxpayers should not rely on the information provided in Notice 2015-16.

**Cadillac Tax Overview**
The Cadillac tax will go into effect beginning in 2018. This provision imposes a 40 percent excise tax on high-cost group health coverage. The Cadillac tax is intended to encourage companies to choose lower-cost health plans for their employees.

The Cadillac tax provision is found in Internal Revenue Code Section 4980I. This provision taxes the amount of an employee's "excess benefit." The excess benefit is the amount by which the monthly cost of an employee's employer-sponsored health coverage exceeds the annual limitation.

For 2018, the statutory dollar limits are:

- $10,200 per employee for self-only coverage; and
- $27,500 per employee for other-than-self-only coverage.

The tax amount for each employee's coverage will be calculated by the employer and paid by the coverage provider.

The Cadillac tax applies to "applicable employer-sponsored coverage" (both insured and self-insured). Applicable employer-sponsored coverage is coverage under any group health plan made available to the employee by the employer, which is excludable from the employee's gross income under Code Section 106.

Applicable coverage also includes health flexible spending accounts (FSAs), health savings accounts (HSAs), on-site medical clinics, retiree coverage, multiemployer plans and coverage only for a specified disease or illness and hospital indemnity or other fixed indemnity insurance (if paid on a pretax basis or if a Section 162(l) deduction is allowed).

## DOL Issues Final Rule to Expand FMLA Protections for Same-sex Spouses

The Department of Labor (DOL) has issued a final rule that will expand rights under the Family and Medical Leave Act (FMLA) for same-sex spouses. Under the final rule, eligible employees in legal same-sex marriages will be able to take FMLA leave in order to care for their spouses or family members, regardless of where they live.

The DOL's new guidance is effective March 27, 2015, and it replaces guidance regarding FMLA protections for same-sex spouses that was issued following the U.S. Supreme Court's decision in *United States v. Windsor*.

The final rule changes the definition of "spouse" under the FMLA as follows:

- Adopts a "place of celebration" rule (which is based on where the marriage was entered into), instead of the "state of

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## DOL Rule on Same-sex Spouses

residence" rule that applied under prior DOL guidance; and

- Expressly includes same-sex marriages in addition to common law marriages, and encompasses same-sex marriages entered into abroad that could have been entered into in at least one state.

This change will impact FMLA leave in several ways. Specifically, the definitional change means that eligible employees, regardless of where they live, will be able to:

- Take FMLA leave to care for their same-sex spouses with serious health conditions;
- Take qualifying exigency leave due to their same-sex spouses' covered military service; or
- Take military caregiver leave for their same-sex spouses.

In connection with the final rule, the DOL also issued a set of frequently asked questions (FAQs) to help employers and employees understand the changes to the FMLA's definition of "spouse."

To comply with the final rule, employers should review and update their FMLA policies and procedures as necessary. Employers should also train employees who are involved in the leave management process on the expanded eligibility rules for same-sex spouses under the FMLA.

## DOJ to Allow Claims Based on Gender Identity Discrimination

On Dec. 18, 2014, the U.S. Department of Justice (DOJ) announced a reversal of its position regarding whether discrimination based on sex incudes discrimination based on an individual's gender identity and transgender status.

The DOJ has now taken the position that discrimination based on sex includes discrimination based on an individual's gender identity and transgender status.

Although the DOJ's authority to file discrimination lawsuits is limited to government employers, this announcement solidifies the federal government's position on gender identity rights.

**Background**
Title VII of the Civil Rights Act prohibits employers from discriminating on the basis of race, color, religion, sex or national origin when making employment decisions. In 2006, the DOJ took the position that discrimination based on sex excluded discrimination based on an individual's gender identity or transgender status. The DOJ has now reversed this position.

Gender identity is an individual's internal sense of being male or female. An individual's internal identification may or may not correspond to the individual's biological gender. Transgender individuals are people with a gender identity that is different from the sex assigned to them at birth.

**Effect on Employers**
Employers can expect to see more individuals file claims based on gender identity discrimination and increased federal support for employee protections against discrimination based on gender identity and sexual orientation.

Employers should review their employment policies to ensure that they are compliant with federal, state and local anti-discrimination regulations.

## New Guidance and Relief for Employer Payment of Individual Premiums

Under the ACA, employer payment plans do not comply with several provisions that took effect beginning in 2014. Violations of these rules can result in excise taxes of $100 per day for each employee.

An employer payment plan is an arrangement where an employer reimburses or pays premiums for an employee's individual health insurance.

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## New Guidance on Employer Payments

The Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury have released several pieces of guidance clarifying the rules regarding these arrangements. The IRS issued Notice 2015-17 on Feb. 18, 2015, providing further clarification.

Specifically, this notice provides information on several related issues:

- Reiterates that employer payment plans are group health plans that will fail to comply with the ACA's market reforms applicable to group health plans;
- Clarifies that increases in employee compensation do not constitute an employer payment plan, as long as the increases are not conditioned on the purchase of individual health coverage;
- Provides transition relief from the excise tax for employer payment plans sponsored by small employers (those not subject to the ACA's employer shared responsibility rules) and to S corporation health care arrangements for 2-percent shareholder-employees;
- Addresses whether employers may reimburse employees for Medicare or TRICARE premiums for active employees under the ACA; and
- States that employer payments for individual premiums can be excludable from an employee's income under the tax code but will still violate the ACA's market reforms.

Employers should review their benefit and compensation plans and policies to ensure they are not in violation of current guidance regarding employer payment plans.