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Expatriate Health Plans - Only Half an Exemption

On Friday, March 8th, the Agencies released yet another frequently asked question, this time regarding expatriate health plans. The Agencies indicate that expatriate health plans may face special challenges in complying with certain provisions of the Affordable Care Act. After discussing some of these challenges, the Agencies then exempt "expatriate health plans" from complying with most of the Affordable Care Act provisions located in Subtitles A and C of Title I of the Affordable Care Act, including the provisions incorporated into ERISA under ERISA Section 715. The exemption is effective for plan years ending on or before December 31, 2015.

While the exception is certainly welcome, unfortunately it does not cover many expatriate plans sponsored by large, multinational employers. The reason is that the exemption only covers "expatriate health plans" defined as an "insured group health plan with respect to which enrollment is limited to primary insureds who reside outside of their home country for at least six months of the plan year and any covered dependents, and its associated group health insurance coverage." Thus, self-insured expatriate health plans are not covered by this exemption. This means that each separate requirement will need to be examined to determine whether it applies to self-insured expatriate health plans (e.g., PCOR fee, transitional reinsurance fee, preventive care requirements, etc.).

EBSA Link to FAQ