

Offering Fixed-Indemnity Insurance Policies with Wellness Payments? Reconsider.

The age-old adage, “If it sounds too good to be true, it is.” may apply to employer-funded fixed-indemnity insurance policies that make wellness indemnity payments.

In IRS Chief Counsel’s Advice **Memo** dated June 9th, 2023, the IRS strongly advises that policies that doubly purport to provide wellness rewards and avoid taxation are not what they appear. In fact, the Memo outlines why such policies are likely non compliant and may become subject to audits. Although not precedent, such memos are weighty because they reveal thinking of rule making bodies.

Below is a summary of conclusions from the Memo. For detailed legal analysis of a similar plan, **read this Memo** by Counsel at MaynardNexen (formerly Maynard Cooper Gale), accessible via the EB Compliance Share Point website under Resources.

1. Wellness indemnity payments under employer-funded, fixed-indemnity insurance policies (where premium is payable by employee salary reduction via a Section 125 Plan) are includable in the gross income of the employee if they have no unreimbursed medical expense related to the payment.
2. In the plan analysis (from the Memo), when the insured plan pays money because the employee used a wellness benefit, the money is included in the employee’s income and wages.
3. Wages from the wellness indemnity benefits (under such a plan) are taxable wages for purposes of FICA, FUTA, and FITW (Federal insurance, unemployment, and income taxes, respectively).