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## **Must Missouri Employers Allow Individual Coverage in Lieu of a Group Health Plan?**

Missouri House Bill 818, now infamous for creating Missouri's new mandate for cafeteria plans detailed in our prior Email Alert, contains other revisions to group health policies issued in the State. One of the most confusing and troublesome provisions appears to allow employees to divert employer-provided group health premiums to an individual policy of the employee's choosing, through the newly mandated cafeteria plan.

Specifically, the Act codifies new RSMo Section 376.453, which *requires* an employer that pays any portion of the health insurance premium for an employee to establish a premium only cafeteria plan. This new section states that "nothing . . . shall prohibit or otherwise restrict an employer's ability to either provide a group health plan or create a premium only cafeteria plan with defined contributions and in which the employee purchases the policy."

It is unclear whether the phrase "nothing . . . shall prohibit or otherwise restrict" relates to the group health plan or the individual policy. First, it can be read to state that nothing can restrict the ability of the employer to establish a group health plan or cafeteria plan, in which case the statute would be merely permissive. Second, it can be read to state that nothing can restrict the ability of the employee to purchase an individual policy, in which case the individual policy rule becomes a mandate.

In addition, with respect to small employer health plans, new Section 379.940 provides that:

An eligible employee may choose to retain their individually underwritten health benefit plan at the time such eligible employee is entitled to enroll in a small employer health benefit plan. If the eligible employee retains their individually underwritten health benefit plan, a small employer may provide a defined contribution through the establishment of a cafeteria 125 plan . . . . Small employers shall establish an equal amount of defined contribution for all plans.

This section clearly appears to allow an employee to continue the individual health policy, through the cafeteria plan. This section also appears to mandate that the employer pay an equal amount of defined contribution regardless of whether the employee elects to continue the individual policy or to enroll in the group health plan.

Many carriers and employers are concerned that healthier employees might use HB 818 to opt out of the employer's group health plan and use the employer's defined contribution to

purchase individual health coverage, creating additional adverse selection in the group health plan.

As with the cafeteria plan mandate, employers and carriers may challenge HB 818 as being preempted by ERISA. We also are aware that the Missouri Department of Insurance is studying the new legislation, and seeking public comment. In addition, industry groups are asking the legislature for relief from presumably unintended consequences of HB 818. We will keep you apprised as we learn more about this unique legislative effort.