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## IRS Guidance on 2010 Tax Treatment for Coverage Provided to Adult Children to Age 27

**On Wednesday, the IRS issued guidance on the tax treatment of adult children to age 27** who will be covered under their parent's plan. Employers which will not extend this benefit to its employees in advance of the mandated January 1, 2011, implementation date may want to refer to this for planning opportunities.

The changes are explained in IRS Notice 2010-38 and are summarized:

- The tax treatment is effective March 30, 2010, for children covered under the plan who have not reached age 27 in 2010.
- This change may have immediate application for Massachusetts employers providing health coverage to dependent children through age 26.
- Prior to the clarification, Internal Revenue Code ("Code") Section 105(b) excludes from an employee's gross income employer-provided reimbursements made directly or indirectly to the employee for the medical care of the employee, employee's spouse or **employee's dependents**. As amended by the Affordable Care Act, the exclusion from gross income under §105(b) is now extended to employer-provided reimbursements for expenses incurred by the employee for the medical care of the employee's child who has not attained age 27 as of the end of the taxable year.
- The guidance also clarifies that the same rules that apply to an employee's child under age 27 for purposes of Code Sections 105(b) and 106 apply to flexible spending accounts (FSA) and health reimbursement arrangements (HRA) but not for health savings accounts (HSA).
- Coverage and reimbursements under a plan for employees and their dependents that are provided for an employee's child under age 27 are not wages for FICA or FUTA purposes.
- The newly issued guidance notes that the IRS and Treasury **intend** to amend the regulation to include children who are under age 27 with respect to sickness and accident benefits paid from a VEBA, in order to conform to Code Sec. 501(c)(9), as amended by PPACA. Until amended, employers are advised not to provide such benefits through a VEBA.

The IRS website provides some discussion on the amendment and the resulting tax treatment. <http://www.irs.gov/newsroom/article/0,,id=222193,00.html>.