Avoid the "Double Dip":

What Employers Should Know About Questionable Payroll Tax Avoidance Programs

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Disclaimer

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Agenda

- Spotting questionable programs
- Understanding the sales pitch
- Why they raise compliance concerns
- What to offer instead

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The New Face of a Familiar Game

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The Sales Pitch

- A vendor offers to ***boost***, ***enhance***, or ***maintain*** employee take-home pay and ***reduce employer payroll taxes***
- Promotes a ***wellness***, ***preventive care, self-insured medical reimbursement,*** or other similar program
- Employees reduce their wages ***pre-tax*** and receive recurring ***tax-free*** payments, often for doing nothing, taking minimal action, or completing basic wellness activities

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The Appeal

- Employer sees payroll tax savings
- Vendor usually promises reduced employment tax (FICA and FUTA) liability
- Might appear compliant on the surface

Beware of the “Double Dip”

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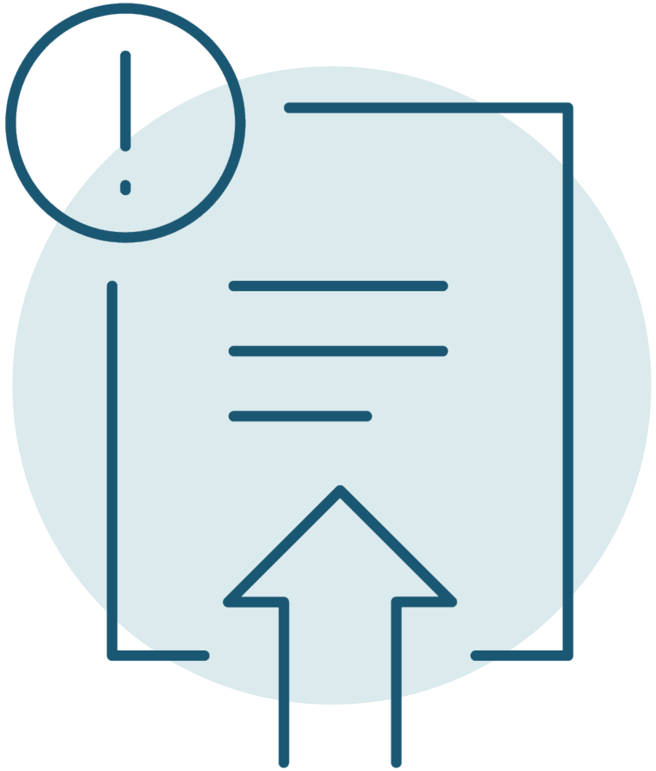
Too Good to Be True

- The IRS reaffirmed that the arrangements are not compliant
- Payments back to employees that don't meet IRS requirements are wages and included in taxable income
- IRS considers this an abuse of tax rules



Why It’s Problematic

- Payments to employees are not tied to IRS-approved medical expenses
- Employee receives money back without substantiation of specific medical expenses
- “Double Dipping” violates Section 125 rules, among other problems

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Common Red Flags

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Signs of Questionable Structures

- Employee take-home pay stays the same or increases, even after pre-tax salary reductions
- Any employee activity is already free (like checking blood pressure), very low cost, or is a personal expense (such as a gym membership)
- The vendor claims it's compliant under ERISA and the Internal Revenue Code, but without proper legal authority
- No substantiation of specific, individual medical expenses is required
- Untaxed reimbursements are made in regular intervals in fixed amounts, often directly related to the amount of the pre-tax contributions
- Employer projected savings far exceed standard pre-tax plans

Misleading Tactics to Watch For

- "Double your tax savings"
- "Boost take-home pay"
- "Tax-free wellness (or other) rewards"
- "Net increase in take-home pay"
- "No out-of-pocket costs"

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Program Features: Questionable vs. Compliant

Feature	Questionable Program	Compliant Program
Funded by employee salary reduction	✓	✗
Funded by the employer	✗	✓
Provides recurring "tax-free" payments to employee in a fixed amount often based on the amount of salary reduced	✓	✗
Promises increase (or no decrease) in take-home pay	✓	✗
Incentives in form of gift cards or cash	✓ (nontaxable)	✓ (but **must be reported as taxable wages**)

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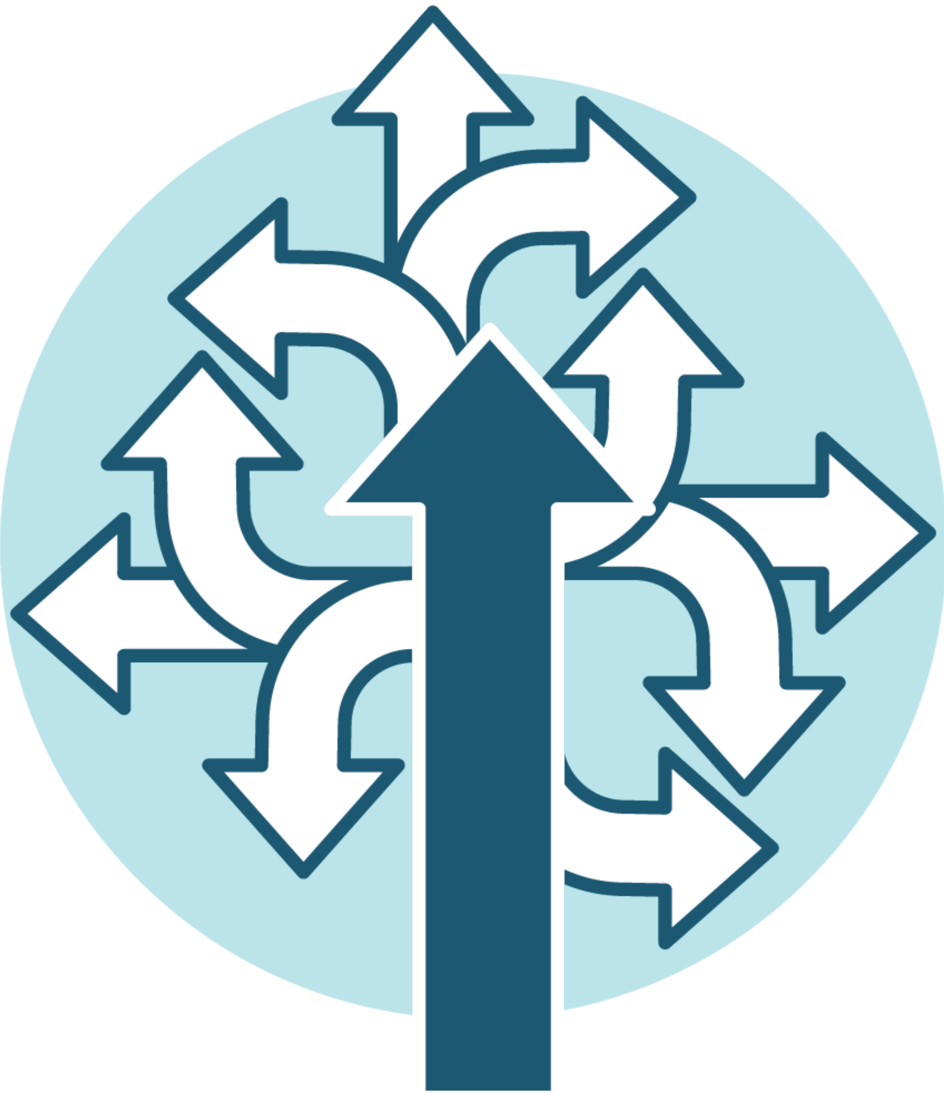
Consequences of a Non-Compliant Approach

- Section 125 cafeteria plan could be disallowed
- All recurrent payments to participants will be taxable; employers and employees must amend their tax returns
- Penalties, fees, and fines may accrue
- Possibility of audit, review, or even criminal enforcement action

U.S. Department of Justice. (n.d.). Federal court permanently bars Chicago tax preparer from preparing federal tax returns for others. https://www.justice.gov/archive/tax/txdv06842.htm. Dec. 15, 2006, accessed March 10, 2026.

U.S. Department of Labor. (2019, June 19). U.S. Department of Labor reaches agreement with health plan trustees to reform plan operations. https://www.dol.gov/newsroom/releases/ebsa/ebsa20190619. June 19, 2019, accessed March 10, 2026.

What Employers Should Do Instead



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Follow Section 125 Rules

- Use a properly designed and administered Section 125 cafeteria plan
- Allow pre-tax contributions only for qualified benefits, including:
  - Health insurance premiums
  - FSA contributions
  - HSA contributions
  - Eligible IRS Code Section 213(d) expenses

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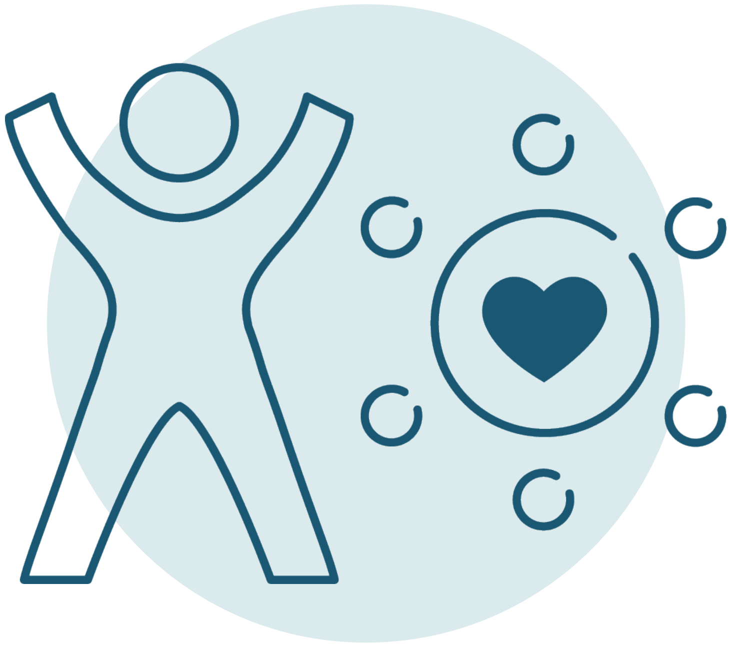
Consider a Compliant Wellness Program

- Offers compliant incentives
- Appropriate wellness activities
- Conforms to ACA, HIPAA, GINA, ADA, and ERISA



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Define Goals and Scope

- **Determine** the primary objectives of the wellness program (e.g., improving employee health, reducing costs, increasing engagement)
- **Decide** which health-related activities or initiatives the program will include (screenings, coaching, preventative measures, etc.)

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Review Legal Requirements and Guidance

- **HIPAA** (Health Insurance Portability and Accountability Act)
- **ERISA** (Employee Retirement Income Security Act)
- **ADA** (Americans with Disabilities Act)
- **GINA** (Genetic Information Nondiscrimination Act)
- **IRS** (Internal Revenue Service)

Develop Written Policies & Materials

- **Outline** how employees participate and earn incentives
- **Provide** required notices (HIPAA, ADA, etc.)

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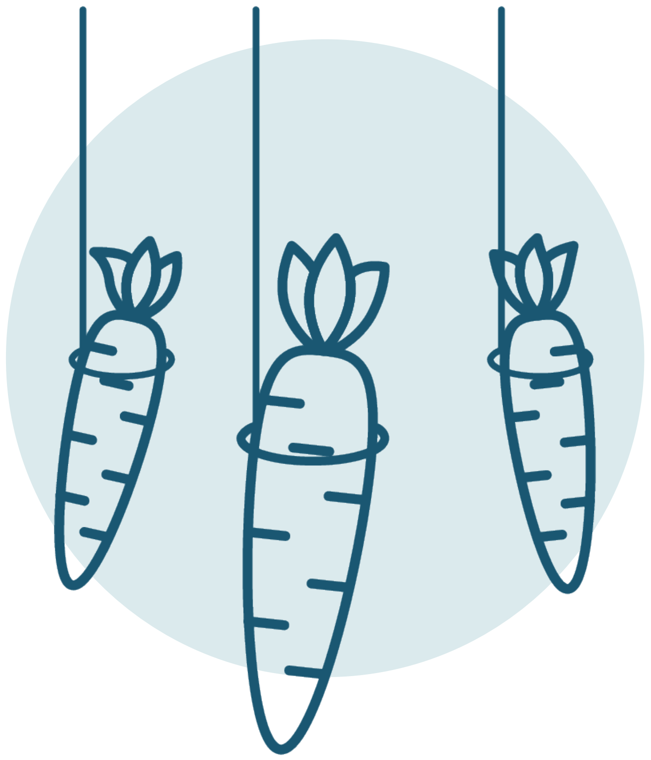
Establish Incentives

- **Choose** the incentives you want to offer (premium discounts, cash, HSA contributions)
- **Adhere** to legal incentive limits (HIPAA, ADA)
- **Ensure** equal access for all employees



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Protect Confidential Information

- **Secure** health data under HIPAA and related standards
- **Train** staff/vendors on confidentiality rules
- **Limit** access to legally protected information

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Implement & Administer

- **Set up** enrollment, record-keeping, and tracking
- **Decide** if you'll engage an external vendor for screenings or coaching
- **Address** employee questions efficiently

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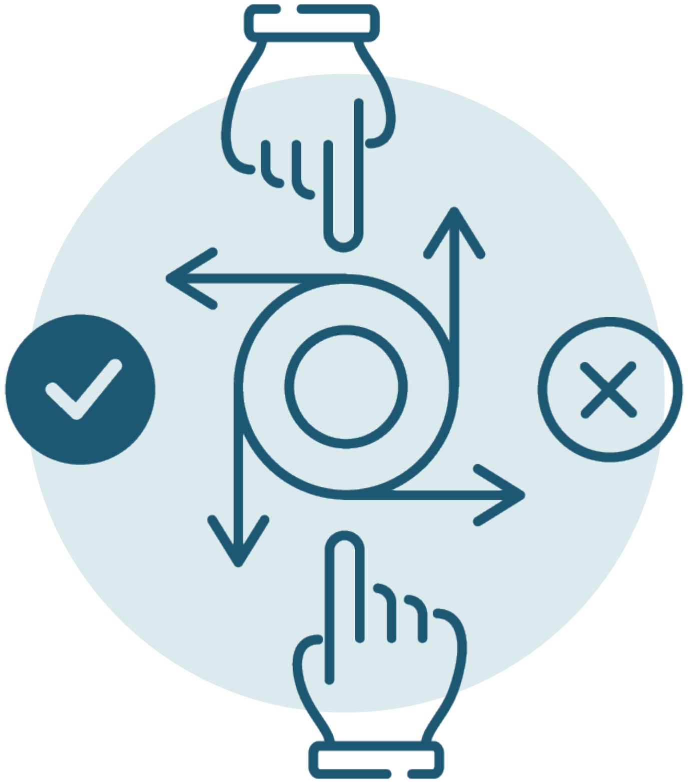
Communicate Clearly

- **Explain** how employees enroll and claim rewards
- **Emphasize** voluntary nature where required
- **Reassure** employees about data privacy and security

Evaluate & Adjust

- **Check** if goals are met (e.g., health outcomes, cost savings)
- **Gather** employee feedback
- **Make** changes to remain effective and compliant



How to Vet a “Wellness” or Other Vendor

- Are payments tied to an individual’s substantiated, IRS-permitted medical expenses?
- Are pre-tax salary reductions being returned to employees as recurrent payments in a fixed amount or based solely on the amount of salary reduced?
- Did the employer obtain an independent legal review?

Final Tips

- **Watch out for tax-avoidance schemes disguised as “wellness” or similar programs**
- Encourage employers and their advisors to:
  - Review any wellness or other related structures already in place
  - Get your own outside legal input–NOT affiliated with the vendor–before signing up for something new

Resources

- https://www.irs.gov/pub/irs-wd/201622031.pdf. April 14, 2016, Accessed March 10, 2026.
- https://www.irs.gov/pub/irs-wd/201703013.pdf Dec. 12, 2016, Accessed March 10, 2026.
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