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Employee Benefits **Simplified**

Stand-Alone HRAs for Small Employers

The 21st Century Cures Act, signed by President Obama on December 13, 2016, gave small employers a means of providing employees help with their individual insurance premiums and other out-of-pocket qualified medical expenses without violating the provisions of the Affordable Care Act (ACA). Small employers can now provide a specific kind of Health Reimbursement Arrangement (HRA) to help employees with the costs of individual health coverage.

According to the statutory language under "Title XVIII – Other Provisions" of the Act, qualified small employer health reimbursement arrangements (QSEHRAs) are not considered "group health plans" and do not have to adhere to ACA market reforms, including annual and lifetime limits or preventive care mandates. And, since QSEHRAs are treated as an "excepted benefit" and are not considered group health plans, they are not subject to certain provisions under the Internal Revenue Code and ERISA. QSEHRAs are not subject to Federal COBRA requirements and are not considered Minimum Essential Coverage (MEC) under the ACA.

Employer and Employee Requirements

Eligible Employers are those that are not applicable large employers (ALEs) and employ fewer than 50 full-time or full-time equivalent employees. QSEHRAs must be funded solely by an eligible employer with no employee salary reduction contributions allowed.

As a condition of offering the QSEHRA, the employer cannot offer a group health plan to any of its employees. And, in order to receive non-taxable reimbursements from the plan, employees covered by the QSEHRA must be covered by an ACA-compliant health plan. ACA-compliant coverage includes both individual polices and group policies that may be provided through an employee's spouse's employer.

All employees must be eligible; however, QSEHRAs may exclude certain employees without being considered discriminatory, such as those who fall into any of the following categories.

- Employees who have not completed 90 days of service
- Employees who have not attained age 25
- Employees who are part-time or seasonal
- Employees who are included in a collective bargaining agreement
- Employees who are considered nonresident aliens and receive no earned income from sources within the United States.

Reimbursement

Any qualified medical expense as defined in section 213(d) that is incurred by eligible employees or their family members are eligible for reimbursement from the plan, including ACA-compliant individual policy premiums. Of course, QSEHRAs may be customized to reimburse only a subset of eligible expenses, depending on the employer's objectives for the plan.

The amount of payments and reimbursements for any year cannot exceed $4,950 for employees with single coverage and $10,000 for those with family coverage. For years beginning after 2016, dollar limits will be indexed based on the annual cost of living adjustment (COLA) in multiples of $50. One important note - annual limits must be prorated based on each eligible employee's months of coverage by the plan. For instance, an employee with family coverage that is eligible on the first day of a 12-month plan year may receive up to $10,000 while another employee with family coverage, hired in the middle of a plan year, would receive only $5,000. Also, employers may offer the maximum limits or make available lower amounts based on their plan design.

Nondiscrimination
The nondiscrimination rules for a QSEHRA are quite simple: the QSEHRA must be provided on the same terms to all eligible employees. There are some permitted variations, however, such as varying limits equal to the price of insurance coverage in the individual health insurance market which vary based on the age of the eligible employee or family members, and the number of family members eligible for coverage.

Documentation, Notice, and Reporting Obligations
The QSEHRA is an ERISA welfare benefit plan, so a plan document and Summary Plan Description must be prepared and distributed. ERISA's fiduciary and other rules also apply. A QSEHRA is subject to HIPAA privacy and security rules, but is generally not subject to small group plan requirements.

Written notices must be provided to all employees no later than 90 days before the beginning of each plan year or immediately to newly eligible employees. The notice must include:

- The dollar amount of the benefit for the year.
- A statement requiring all employees to provide the annual benefit amount to any health insurance exchange when applying for advance payment of the premium assistance tax credit.
- A statement noting that if the employee is not covered under minimum essential coverage (MEC) for any month, the employee may be subject to tax under the individual mandate section 5000A for each month and reimbursements under the QSEHRA may be includible in gross income.

Failure to provide written notices carries a tax of $50 per employee per incident, not exceeding $2,500 for any calendar year. However, for transition relief, the notice to employees may be provided no later than 90 days after the date of enactment of the Cures Act, or March 13, 2017. Notice 2017-20, issued February 27, 2017, extends the initial notice requirement to at least 90 days after additional guidance regarding the QSEHRA notice is issued.

Reporting involves including the amount of employer QSEHRA contributions on employee W-2s, effective for calendar years beginning after December 31, 2016. However, QSEHRA amounts are not included in calculations for the Excise Tax on High Cost Employer-Sponsored Health Coverage (Cadillac Tax), and thus, no Excise Tax reporting is required. That's great news for small employers establishing QSEHRAs.

Transition Relief
The 21st Century Cures Act not only makes QSEHRAs effective for plan years beginning after December 31, 2016, it also extends limited transitional relief for small employers, first given to all plans through Notice 2015-17, for plans beginning before December 31, 2016.

Closing
Since the passage of the ACA, IRS Notices 2013-54 and 2015-17 required that HRAs be integrated with employer-sponsored ACA-compliant group health plans. This signaled the end of stand-alone HRAs used by many small employers to assist their employees in purchasing individual health policies. Small employers no longer had a way to help their employees with the growing costs of insurance coverage and medical expenses, leaving small employers and their employees in a lurch.

With this new QSEHRA, small employers can once again offer a plan with meaningful benefits for their employees.