



IMPORTANT ALERT

Standalone HRAs for Small Employer Reminder

As of January 1, 2017, small employers again have the capability to offer employees a standalone Health Reimbursement Arrangement (HRA) without being subject to an excise tax. This capability was created as part of the 21st Century Cures Act.

Background

It was 2013 when the IRS previously advised that in order for an HRA to meet the market reforms of the ACA it must be integrated with group health plan coverage. Generally, market reform requires that a group health plan provide preventive services at no cost and no lifetime/annual limits on essential health benefits. Offering an HRA that is not integrated would subject the employer to an excise tax of \$100 per day per affected individual. The Cures Act removed qualified small employer HRAs from the definition of “group

health plans” by excluding these arrangements under ERISA.

Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)

The Cures Act created “qualified small employer health reimbursement arrangements” under the Internal Revenue Code. To offer a QSEHRA, a small employer must meet the following conditions:

- Be an employer that is not an applicable large employer (ALE) based on the Affordable Care Act, which means the employer did not have more than 50 full-time/full-time equivalent employees during the preceding calendar year.
- Be an employer that is not offering a group health plan to any of its employees.
- Offer the HRA to all of its similarly situated eligible employees. Employees may be excluded if:

- They have not completed 90 days of service;
- Are under the age of 25;
- Are part-time or seasonal;
- Covered by a collective bargaining agreement which bargained in good faith for accident and health benefits;
- They are nonresident aliens without United States earned income.
- An employer must solely fund the HRA; no employee salary reduction contributions are permitted.
- Provide for payment or reimbursement of expenses for medical care (including premium expenses for an individual health insurance policy) incurred by eligible employees, employees’ spouses or dependents.
- Reimbursements cannot exceed \$4,950 for an

individual or \$10,000 when family coverage is provided.

Issues of Concern

Besides the previously addressed conditions an employer must meet to offer a qualified HRA, there are other issues which may be of concern to employers and employees.

- An employee may be taxed on reimbursements from the qualified HRA if the employee does not have minimum essential coverage.
- If an employee enrolls in a qualified health plan on the Marketplace, any premium tax credits will be reduced by the available benefit under the qualified HRA.
- Employers must report on an employee's W-2 the benefit available under the qualified HRA beginning in calendar year 2017.
- Since the qualified HRA is not treated as a group health plan under ERISA, it is also not treated as a group health plan for purposes of COBRA continuation coverage.

Provide Notice

Although not considered a group health plan, an employer maintains an obligation to provide certain disclosures to employees or participants. At least 90 days before the beginning of the plan year in which the QSEHRA is offered, an employer must provide a notice to

employees. *The rule is pretty straightforward on this. This 90 day notice is not only applicable to new plans, but also to renewing plans. Therefore, this notice requirement is applicable to a QSEHRA renewing for 2018.*

Notice Content

The notice must include the following information:

- The benefit amount available under the HRA;
- Advise employees to inform any health insurance exchange of the HRA benefit if the employee is applying for an advance premium tax credit;
- Advise employees that if they do not maintain minimum essential coverage for any month, they may be subject to taxable income for any month in which reimbursements were made under the QSEHRA.

What Employers Need to Know

- An employer is subject to a \$50 penalty per employee, up to a maximum of \$2,500, for failure to provide notice to employees regarding the qualified HRA.
- All employees in a control group are considered when determining whether an employer is a small employer and whether a group health plan is offered to any employee.
- Qualified HRAs are not intended to solely benefit owners, executives or highly

compensated employees of an employer.

- An employer may pro-rate the amount available under a QSEHRA based on coverage eligibility. For example, an employee who is only eligible for six months of coverage may only receive an individual benefit amount of \$2,475.
- Although a QSEHRA is not considered a "group health plan" under ERISA, it is still an employee benefit arrangement under ERISA and subject to its accompanying disclosure obligations.

Conclusion

The ability for small employers to offer an HRA for reimbursement of individual insurance premiums is welcome relief from onerous tax penalties. At the same time, employers must ensure compliance with conditions, disclosure and reporting requirements.

