

CURING WHAT AILS YOU

RELIEF FOR SMALL EMPLOYER HRAS

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Curing What Ails You – Relief for Small Employer HRAs

Written by Nancy K. Campbell – 2/22/17

The impact of the Affordable Care Act (“ACA”) on health reimbursement arrangements (“HRAs”) has not been favorable. Many employers got rid of their HRAs or integrated them with a major medical plan in order to avoid significant penalties under ACA. These rules imposed a significant burden on small employers, because many small employers used HRAs to reimburse employees for the cost of individual health insurance policies they purchased rather than sponsor a group health plan.

In IRS Notice 2015-17, Q&A1, the IRS granted limited relief for small employer HRAs through June 30, 2015. However, at the end of last year, small employers received greater relief in the form of the 21st Century Cures Act (the “Cures Act”).

The Cures Act, enacted on December 13, 2016, introduces a new type of tax-preferred arrangement that small employers may use to help their employees pay for medical expenses called “qualified small employer health reimbursement arrangement” or “QSEHRAs.” In addition the Cures Act extends the relief under Q&A 1 of Notice 2015-17 for plan years beginning on or before December 31, 2016.

Small Employers May Offer QSEHRAs

Only small employers that do not offer a group health plan to any of their employees may offer a QSEHRA. This means that the employer, on a controlled group basis, may not be an applicable large employer

under Code Section 4980H(c)(2). Therefore, an employer that employed at least 50 full-time employees, including full-time equivalent employees, in the prior calendar year may not offer a QSEHRA to its employees.

Small employers who decide to offer a QSEHRA to their employees must carefully monitor small employer status each year to avoid penalties when they become a large employer. For more information on determining status as a large employer see Worksheet #1 of our *Health Care Reform's Employer Shared Responsibility Penalties: A Checklist for Employers*.

QSEHRA Requirements

Under the Cures Act, a QSEHRA must meet the following requirements:

- The arrangement is funded solely by an eligible employer, and no salary reduction contributions may be made under the arrangement;
- The arrangement provides, after the employee provides proof of coverage, for the payment to, or reimbursement of, an eligible employee for medical care expenses (as defined in Code Section 213(d)) for the eligible employee and his or her family members (as determined under the terms of the arrangement);
- The amount of payments and reimbursements for any year do not exceed \$4,950 for individuals, or \$10,000 in the case of an arrangement that provides for payments or reimbursements for family members of the employee. These amounts are indexed for increases in cost of living; and

- The arrangement is provided on the same terms to all eligible employees of the employer (although exclusions are allowed for employees who have less than 90 days of service, are less than 25 years of age, or are part-time or seasonal workers). A variation in reimbursements is permitted due to age of the employee or the number of family members covered, but the amount of the variation is not defined.

Notice Requirement

In order to offer a QSEHRA, an employer must notify all employees at least 90 days prior to the beginning of the plan year about the QSEHRA. For the initial year of enactment, the notice must be provided by March 13, 2017, a date that is fast approaching.

The notice must explain the amount of the benefit each year, instruct the employee to notify any Health Care Exchange in which the employee participates about the amount of the benefit, and include a statement that reimbursements may not be tax-exempt unless the employee maintains minimum essential coverage.

Effective Date

Eligible employers may offer QSEHRAs after December 31, 2016.

Other Considerations

Importantly, the Cures Act provides that a QSEHRA is not a group health plan. This means, for example, that such arrangements are not subject to COBRA. However, employers that decide to offer QSEHRAs may wish to keep in mind that many other rules apply. For example, both the Code and ERISA require the employer to adopt a written plan document describing the details of the arrangement.

Finally, employees who are eligible to receive tax credits for coverage through a Health Care Exchange may lose eligibility for those tax credits if their employer funds a QSEHRA for them.

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