

The 21st Century Cures Act Creates Qualifying HRAs for Small Employers

As it relates to health insurance, one of the concerns among small businesses and other small employers, as well as their employees, was that the Affordable Care Act (“ACA”) would eliminate an option that they had grown accustomed to: health reimbursement arrangements (“HRAs”), which allows employees to be reimbursed for out-of-pocket medical expenses. That concern may now be quelled as President Obama signed the 21st Century Cures Act (“Cures Act”).

The Cures Act allows small employers to establish HRAs for their employees without risking penalties under the ACA. The Cures Act also extends excise tax relief for premium reimbursement arrangements that had been offered by small employers beginning on or before December 31, 2016.

The new HRA under the Cures Act is called a Qualified Small Employer Health Reimbursement Arrangement, or QSEHRA. The QSEHRA is not considered a “group health plan” and applies as follows:

- Employers may establish a QSEHRA so long as they are not an applicable large employer under the ACA and do not offer a group health plan. In other words, the employer must have less than 50 full-time employees.
- The benefits can only be funded by the employer, and must be offered to all employees, subject to certain limited exceptions.
- Annual benefits are limited to \$4,950/year for single coverage or \$10,000/year for family coverage. These terms may be varied slightly based upon the cost of coverage in the individual health insurance market.
- Payments and reimbursements from the QSEHRA are limited to those medical expenses defined in Code Section 213(d), which includes insurance premiums.
- Benefits are excluded from the employee’s income only if the employee provides proof that the employee and all covered family members (if applicable) have minimum essential coverage.
- Annual notice must be provided to each eligible employee at least 90 days before the beginning of the plan year and must provide specific information, such as the amount of the benefit and tax warnings.

This provision overturns guidance previously issued by the IRS and U.S. Department of Labor that had identified that such HRA arrangements violation the ACA insurance market reforms and were subject to penalty based upon such arrangements. The QSEHRA may be a beneficial option for both employers and employees that had come to rely on the benefits provided by HRA accounts.