

Small Employer Healthcare Relief Act Now a Reality

With the December 7, 2016 passage of the long-awaited Cures Act and President Obama having signed it into law, many small employers and their employees can now rejoice that an onerous IRS ruling is overturned. Starting January 1, 2017, small employers that do not offer group health insurance to their employees will have a tool to provide a tax-favored reimbursement to their employees. And more good news: there's transition relief retroactive for all plan years beginning on or before December 31, 2016 that the onerous penalties announced by the IRS in Notice 2015-17 are no longer in effect.

Eligible Employers

To be eligible to offer a new Qualified Small Employer Health Reimbursement Arrangement (QSEHRA), an employer must meet the following two requirements:

1. It must not be an Applicable Large Employer (ALE) under the ACA definition. This means that the employer must have fewer than 50 full-time plus full-time equivalent employees.
2. The employer cannot offer group health coverage to any employee.

Qualified Small Employer Health Reimbursement Arrangements

The QSEHRA would be able to reimburse eligible employees pre-tax both for premiums paid for individual coverage as well as for eligible unreimbursed medical expenses. Premiums paid to purchase other group health coverage, such as through a spouse's employer's plan, are not eligible for reimbursement under a QSEHRA.

Such a QSEHRA must also meet a number of rules:

1. Like other HRAs, only employers may contribute. Employees may not contribute, either directly or indirectly via salary reduction.
2. It must be provided on the same terms to all eligible employees of the employer. For example, an employer would be able to provide one amount of contributions for employees who bought individual health policies just for themselves and a higher amount for those who purchased family coverage, as long as that coverage was not provided by a group.
3. Further, variation in reimbursement amounts for individual insurance premiums is allowed if that variation is due to age-rating for the employee

- and/or family members or the number of family members.
4. The maximum amount of payments and reimbursements for any year does not exceed \$4,950 if only the employee is covered, or \$10,000 (both numbers indexed) in the case of an arrangement that also provides for payments or reimbursements for family members of the employee.
 5. For an employee who is not covered under a QSEHRA for the entire year, the maximum amounts allowed above are prorated on a month-by-month basis. Thus, for example, an employee who is only covered under a QSEHRA for six months would be limited in that calendar year to payments and reimbursements of not more than \$2,475 ($\$4,950 / 12 \times 6$) if only she is covered, or \$5,000 ($\$10,000 / 12 \times 6$).
 6. An employer is required to verify that the employee is covered under either an individual or group health plan that meets the minimum essential coverage requirement of the ACA.
 7. An employer adopting a QSEHRA must provide a notice to employees who are eligible at the start of each year (and to those who become eligible during the course of the year). The notice must contain the following:
 - a. The amount of that eligible employee's permitted benefit under the QSEHRA for the year.
 - b. A statement that the employee should provide the information to any health insurance exchange to which the employee applies for advance payment of the premium assistance tax credit.
 - c. A statement that if the employee is not covered under minimum essential coverage for any month the employee may be subject to tax for that month and reimbursements under the arrangement may be includible in gross income.

Starting in January 2018 for the 2017 tax year, employers eligible for and sponsoring QSEHRAs will be required to report the total amount of permitted benefits for each employee.

For those small employers subject to COBRA (that is, those with between 20 and 49 employees), the new QSEHRAs are not subject to the provisions of COBRA, and thus would not need to be offered upon an otherwise qualifying COBRA event.

Lastly, not that the Cadillac Tax (scheduled to begin now in 2020) will still be around, but amounts contributed to a QSEHRA will count towards the coverage limits provided in that tax.

Kushner & Company anticipated passage of this measure and is ready to help eligible small employers adopt QSEHRAs starting in 2017.

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