Lawyers Alliance for New York

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REIMBURSEMENT OF EMPLOYEE-PURCHASED HEALTH INSURANCE IS PERMITTED AGAIN

The 21st Century Cures Act allows certain small employers, including nonprofit employers, to offer “qualifying small employer health reimbursement arrangements” (“QSEHRAs”) to their employees. Through these arrangements, employers can reimburse their employees for premiums paid for insurance purchased on their own, a practice that was previously deemed noncompliant under the Affordable Care Act (the “ACA”).

Which organizations may offer qualifying small employer HRAs?

Only organizations that are not considered “applicable large employers” under the ACA may offer these arrangements. Generally, this means an employer should have averaged fewer than fifty full-time employees during each month in the prior calendar year. A small employer might nonetheless be ineligible depending upon the size of other entities to which it is related.

What are the requirements for an employer offering a qualifying small employer HRA?

- The arrangement must be offered on the same terms to all eligible employees. Qualifying small employer HRAs will be considered to be offered on the same terms to all eligible employees even if they are based on the cost of insurance in a market where the cost varies based on age and family size.
- The arrangement must be funded solely by the employer. Employees cannot contribute to qualifying small employer HRAs through a salary reduction.
- Reimbursements must be capped at $4,950 per year for an employee’s own expenses or $10,000 per year if the arrangement provides for reimbursement of family members’ expenses.
- Employers must provide a written notice to each eligible employee no later than 90 days before the start of each plan year. The notice must describe the QSEHRA, including the amount of reimbursement available. If an employer fails to provide this notice, it may be subject to financial penalties.
- The amount available under the qualifying small employer HRA must be reported on Form W-2.

Which employees are considered “eligible employees”?

All employees of an employer offering a qualifying small employer HRA are considered eligible, except employees who:

- have been employed fewer than 90 days;
- are under the age of 25;
- are part-time and seasonal employees;
- are represented by a union that has not bargained for coverage; or
- are non-resident aliens with no US-source income.

Does the availability of the qualifying small employer HRA satisfy employees' obligations under the ACA's individual health insurance mandate?

QSEHRA's do not satisfy the individual mandate for employees. If an employee does not otherwise have minimum coverage in place, he or she will have to pay the individual mandate tax, and the amounts reimbursed under a qualifying small employer HRA will be considered taxable income. The notice provided by the employer in advance of each plan year must advise employees of this consequence and note that employees must disclose the presence of a QSEHRA in applying for or renewing coverage purchased on the health insurance marketplace. The availability of the QSEHRA will also reduce the tax credit that may otherwise be available to employees.

What should an organization do if it is considering offering a qualifying small employer HRA to its employees?

Consult with counsel. A knowledgeable attorney can:

- assess whether an organization is eligible to offer a QSEHRA;
- advise on legal requirements for structuring and maintaining a QSEHRA, including the applicability of coverage continuation (COBRA) and HIPAA portability requirements; and
- suggest alternative arrangements to help employees afford health insurance.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at www.lawyersalliance.org for further information.

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