Did You Know Small Employers Now Have a Useful Tool to Help Offset the Cost of Health Insurance?

Hinckley Allen Employee Benefits & Executive Compensation Newsletter

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The Affordable Care Act ("ACA") made it unlawful for employers to offer a pre-tax stipend to be used for health insurance costs. With the passage of the 21st Century Cures Act, and adoption of the "Qualified Small Employer Health Reimbursement Arrangement" ("QSEHRA") this is no longer the case. Qualified small employers now have a useful tool to help their employees pay for the cost of health insurance.

A QSEHRA is a new type of Health Reimbursement Arrangement (HRA) which provides for employer-funded benefits that can only be used to pay for medical care expenses of eligible employees and their covered family members after the employee has provided proof of coverage.

A QSEHRA must meet the following criteria:

> **Qualifying Employers**: The arrangement may only be offered by small employers with fewer than 50 full-time equivalent employees in the prior calendar year and that do not offer a group health plan to its employees. It is important to keep in mind that employer size is based on the controlled group. For example, an employer with 35 full-time equivalent employees that is a member of an ERISA controlled group with 20 other full-time equivalent employees may not sponsor a QSEHRA. Similarly, if the employer is a member of a controlled group and any member of the controlled group sponsors a group health plan, the employer may not offer a QSEHRA even if it does not itself participate in the group health plan.
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> **Eligible Employees**: The same benefit terms must generally be offered to all employees. However, the amount of premium reimbursement under the QSEHRA may

vary based on the age and number of family members covered by the policy. Also, the plan may exclude employees with fewer than 90 days of service, those under age 25, and certain part-time and seasonal employees, union employees or non-resident aliens with no U.S. source income.

Benefit Amount: Annual benefits cannot exceed a maximum of $4,950 per year for individual coverage or $10,000 for family coverage (indexed for inflation). The employer must review receipts and other documents from eligible employees to verify that medical expenses are eligible for reimbursement under the QSEHRA.

Notice Requirement: Generally, notice of QSEHRA availability must be provided:

(i) at least 90 days in advance of the start of the year, or

(ii) no later than the hire date for new employees.

However, the IRS and Treasury plan to issue guidance that will describe what information needs to be included in the notice. Transitional relief is being provided for at least 90 days following the issuance of that guidance. Until such guidance is released and becomes effective, there is no penalty for failure to provide the initial written notice.

Employers may rely on a reasonable good faith interpretation of the statute to determine the contents of the notice. The statute provides that the notice must include:

(i) the amount of the employee's yearly benefit eligibility,

(ii) that the employee is required to report the benefit when renewing coverage purchased through an exchange/marketplace, and

(iii) that the employee will pay taxes on QSEHRA payments if the employee fails to maintain health insurance coverage during any period when the employee is receiving QSEHRA payments.

Reporting Requirements: The employee's permitted benefits must be reported on Form W-2, but the amount is not treated as taxable wages. The employer must also send a 1095-B form to each eligible employee and transmit the 1095-B data to the

IRS on Form 1094-B.

HIPAA privacy and security: A QSEHRA is considered a HIPAA "covered entity" that is subject to the HIPAA privacy and security rules. However to the extent that the eligible employer's QSEHRA has under 50 participants and is self-administered (e., a third party administrator is not used to administer the QSEHRA), the eligible employer will not be subject to the HIPAA privacy and security rules with regards to the QSEHRA.

ERISA Obligations: Although a QSEHRA is not considered an ERISA "group health plan," it is still an employee benefit arrangement that is subject to ERISA, so it must have a plan document and summary plan description and is subject to ERISA's fiduciary rules.

COBRA Obligations: Similarly, a QSEHRA is not considered a group health plan for purposes of the COBRA rules. Therefore, an eligible employer does not have to offer eligible employees (or their covered family members) the opportunity to elect federal COBRA continuation coverage for the QSEHRA.

Employers considering offering this new arrangement will have to weigh the costs of establishing and administering such an arrangement against the benefits to employees. Further consideration should also be given to the fact that coverage under a QSEHRA may affect the employee's eligibility for a subsidized individual policy from an insurance Exchange/Marketplace. Any subsidy for which the employee would otherwise qualify will be reduced dollar-for-dollar by the QSEHRA.

Of course, the impact of this legislation is uncertain given the possibility of fundamental changes to health care reform by the Trump Administration. But for now, QSEHRAs offer small employers a way to defray the high cost of health insurance for their employees without the trouble and expense of providing a group health plan.

Please contact our employee benefits team to discuss whether a QSEHRA is right for you.

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