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>> ALERT

NEW LAW ALLOWS SMALL EMPLOYERS TO OFFER STANDALONE HRAs

On December 13, 2016, President Barack Obama signed into law the 21st Century Cures Act (Cures Act), which, among other provisions, expands the use of health reimbursement arrangements (HRA) for small employers. The new law reverses the prior position of the Internal Revenue Service (IRS) that generally prohibited these arrangements.

THE BOTTOM LINE

Small employers can now use HRAs to fund their employee's health insurance premium costs. However, it is unclear at this time whether this option will be attractive to small employers or if it will be eclipsed by other anticipated changes to the ACA.

BACKGROUND

An HRA is generally a hypothetical bookkeeping account to which an employer can credit amounts that may be used by employees for medical premiums or approved medical care expenses incurred by the employee and the employee's spouse and dependents.

Prior to the Cures Act, the IRS had determined that HRAs needed to comply with certain Affordable Care Act (ACA) market reform mandates, including the prohibition on annual dollar limits and the requirement to provide certain preventive services without any cost sharing. Because virtually all HRAs failed to comply with the ACA mandates on their own, HRAs needed to be "integrated with" other health care plans that provided the necessary coverage. As a result, HRAs effectively could not be used to pay for an employee's coverage on the health insurance Marketplace (i.e., they could not be used on a "stand alone" basis).

CURES ACT

However, under the Cures Act, qualified small employers (i.e., employers with fewer than 50 full-time equivalent employees that are not subject to the ACA employer mandate) will now be able to use qualified small employer health reimbursement arrangements (QSEHRA) as a vehicle to pay for employees' health insurance premiums. After employees provide proof of coverage (e.g., of coverage on the Marketplace), employers may make contributions to the QSEHRA not to exceed $4,950 for an employee (or $10,000 for a family) (indexed). Importantly, employers must offer the arrangement on the same terms to all eligible employees, with the exception that certain variations are permitted if they are in accordance with the variation in the price of an insurance policy based on age or number of family members.

In order to utilize QSEHRAs to fund employee premium costs, employers must provide a written notice to eligible employees at least 90 days before the beginning of the year for which the small employer is planning to offer the QSEHRA. The notice must include:

1) The amount that the employee will receive from the QSEHRA;
2) That the employee must provide information regarding the QSEHRAs to the health insurance Marketplace if the employee is receiving health insurance from the Marketplace; and
3) That the employee must have minimum essential coverage to receive the QSEHRA distributions to cover premiums tax-free.

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The amount contributed can be provided pre-tax, but it must be reported on an employee's Form W-2.

It is unclear at this time how this change will fit in with other modifications that may be made to the ACA by the incoming administration. Nor is it clear whether QSEHRA represents a marked improvement over other options already available to small employers, including the ability to simply offer their own health care plans.

Before an employer adopts a QSEHRA, it must consider a number of factors, including the impact on employees. For instance, employees who are eligible for a tax subsidy may lose those tax credits if their employer offers a QSEHRA.

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