

The Beginning of The Repeal of Obamacare? Some Relaxation of The Rules For Small Employers

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In my blog post last September, I told you that employers could no longer offer to pay their employees' premiums for individual healthcare due to rules under the Affordable Care Act ("ACA"). However, starting January 1, 2017, small employers (those under 50 full-time employees) may set up a Qualified Small Employer Health Reimbursement Arrangement ("Qualified HRA") for their employees that would allow them to reimburse the premium costs of individual health insurance (as well as reimburse the employee for other healthcare expenses) without having to link that HRA to another group health plan.

A Qualified HRA must meet the following conditions:

- It is provided on the same terms to all eligible employees. As an exception, an employer could vary the benefit to an employee based on the variation in cost of the insurance policy (i.e., due to the age of the employee or the number of covered family members).
- It is funded solely by the employer; no employee salary reduction contributions are permitted.
- It pays or reimburses an employee for expenses for medical care under Code Section 213(d) incurred by the employee or the employee's family members. These expenses would include the premium cost for an individual health insurance policy.
- Reimbursements under the Qualified HRA do not exceed \$4,950 for the employee only or \$10,000 for family coverage. These amounts are pro-rated for an employee who is covered for a partial year and will be indexed in future years.
- **All** employees must be offered coverage under the Qualified HRA other than:
 - (a) Employees with less than 90 days of service;
 - (b) Employees younger than age 25;
 - (c) Part-time and seasonal employees;
 - (d) Union employees; and
 - (e) Non-resident aliens.

Notice Requirement

An employer offering a Qualified HRA must provide each eligible employee a written notice at least 90 days before the beginning of each year. The notice must include:

- The amount of the permitted benefit under the Qualified HRA for the year;
- A statement that if the employee is applying for advance payment of the premium tax credit for health insurance on the Marketplace, the employee must inform the Marketplace of the amount of the permitted benefit under the Qualified HRA. (If an employee enrolls in a qualified health plan on the Marketplace, his or her premium tax credit will be reduced by the benefit available under the Qualified HRA.)
- A statement that if the employee is not covered under minimum essential coverage for any month, the employee may be subject to a tax under Code Section 5000A and reimbursements under the Qualified HRA may be taxable income.

Under a transition rule, for 2017, the notice must be provided within 90 days after the date of enactment of the new law (which was December 13, 2016 – so by March 13, 2017).

An employer is subject to a penalty of \$50 per employee for a failure to provide the notice, up to \$2,500 per year.

W-2 Reporting

The employer is required to report the benefit available under the Qualified HRA on each employee's Form W-2 beginning in calendar year 2017.

If you have any questions regarding Qualified Small Employer HRAs or want to discuss other employee benefits questions, please contact Jo-Anne Mineweaser or 412-594-3920.