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Qualified Small Employer Health Reimbursement Arrangements

12.16.2016

President Obama signed the "21st Century Cures Act" on December 13, 2016, which included a critical change to the Internal Revenue Code ("Code") and the Employee Retirement Income Security Act ("ERISA") affecting certain small employers. Specifically, employers that are exempt from the "pay-or-play" rules of the Patient Protection and Affordable Care Act (the "ACA") may now offer employees a "qualified small employer health reimbursement arrangement" ("QSEHRA") for plan years beginning after December 31, 2016.

By way of background, the ACA imposed many mandates on non-excepted group health plans covered by the Code and ERISA. Two of those mandates included a prohibition on annual limits and a requirement to provide certain preventive services without cost-sharing. A health reimbursement arrangement ("HRA") which is not integrated with a group health plan (i.e., the HRA stands alone) does not, and cannot, satisfy these two mandates. As a result, while HRAs integrated with self-funded or insured group health coverage satisfy these mandates and therefore may be offered by employers, federal governmental agencies (specifically the Internal Revenue Service and the Department of Labor) took the position that stand-alone HRAs are not ACA compliant.

In response to this position, Congress and the President adopted an exception permitting stand-alone QSEHRAs upon satisfaction of the following criteria:

- The employer offering the QSEHRA must: (i) not be an "applicable large employer" under the ACA (in other words, the employer must generally have fewer than 50 full-time employees in its controlled group of businesses during the preceding calendar year); and (ii) not offer a group health plan to any of its employees.

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- The QSEHRA must be funded solely by the employer (no employee may make salary reduction contributions to the QSEHRA).
- The QSEHRA pays or reimburses medical care expenses (including health insurance) incurred by the employee or employee's family members, provided the employee demonstrates proof of coverage.
- The annual payments and reimbursements from the QSEHRA may not exceed $4,950 (or $10,000 in the case of a QSEHRA that provides for payment or reimbursement for family members). This amount must be prorated for employees covered during a partial year and may be increased annually for cost-of-living adjustments.
- The QSEHRA must be provided on the same terms to all employees (although the employer may exclude: employees who have not completed 90 days of service; employees who have not attained age 25; part-time or seasonal employees; collectively bargained employees; and nonresident alien employees with no US-source income). *Importantly, this criteria does not prohibit a QSEHRA from paying or reimbursing the cost of individual health insurance which varies in accordance with the variation in the price of an insurance policy in the individual health insurance market based on the age of the employee or family members or the number of family members covered under the arrangement*.

Reimbursements from the QSEHRA will be taxable to an employee if the employee does not have minimum essential coverage. In addition, the amount of payments and reimbursements under the QSEHRA will reduce the amount of the premium assistance tax credit the employee can receive.

The employer must provide a written notice no later than 90 days before the beginning of a year (or 90 days after the enactment of the "21st Century Cures Act") including:

- A statement of the amount of payments and reimbursements that the employee may receive for the coming year from the QSEHRA;
- A statement that the employee should provide the amount of payments and reimbursements he or she may receive for the coming year to any health insurance exchange to which the employee applies for advance payment of the premium assistance tax credit; and
- A statement that if the employee is not covered under minimum essential coverage for any month, the employee may be subject to the individual mandate tax under the ACA and that reimbursements may be includible in gross income.

Failure to provide the notice will subject the employer to a $50 per employee per incident, up to $2,500 per calendar year.

In conclusion, if you have fewer than 50 full-time employees and are interested in potential health care alternatives for your staff, please contact the author of this bulletin or any other member of the Employee Benefits team at Butzel to discuss your options.

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