Law Creates New HRA Option for Small Employers to Reimburse Individual Premiums

On December 7, Congress approved legislation that, among other things, establishes a new tax-favored vehicle for reimbursing employee health care expenses, including individual health insurance premiums.

Previously, the Internal Revenue Service ("IRS") had concluded that employers could not offer so-called health reimbursement arrangements (HRAs) unless they were "integrated" with a traditional group health plan. It had also determined that employers could not pay or reimburse premiums for health coverage purchased in the individual market. Doing so, according to the IRS, would subject the employer to an excise tax of $100 per day for each affected participant.

Title XVIII of the 824-page 21st Century Cures Act (the "Act") creates an exception to the IRS' interpretation. The exception is only available to employers that are not "applicable large employers" subject to the Affordable Care Act ("ACA") employer shared responsibility rules (that is, small employers with fewer than 50 full-time equivalent employees). **Beginning in 2017, these small employers that do not offer a group health plan may reimburse employees for individual health insurance premiums and other medical expenses on a tax-free basis under a "qualified small employer health reimbursement arrangement" ("QSEHRA").**

Requirements of a QSEHRA

An arrangement must satisfy the following requirements in order to qualify as a QSEHRA:

- The arrangement must be funded solely through employer contributions (not employee salary reductions).
- Employees must furnish proof that they have "minimum essential coverage" in order to receive benefits.
- The arrangement must be made available to all eligible employees on the same terms (although reimbursement amounts may vary to the extent premiums vary by age or number of family members).
- All employees must be eligible, with the following exceptions:
    - Employees under age 25;
    - Employees with fewer than 90 days of service;
    - Part-time and seasonal employees;
    - Employees subject to a collective bargaining agreement covering health benefits; and
    - Certain non-resident alien employees.

- The maximum annual benefit cannot exceed $4,950 for single coverage or $10,000 for family coverage (as adjusted annually for inflation). These amounts are prorated for employees who are eligible less than a full 12 months.
- The arrangement may only reimburse premiums and other medical expenses defined under Section 213(d) of the Internal Revenue Code.

Notice Requirement

Employers must provide eligible employees with a written notice no less than 90 days before the beginning of any year for which they offer a QSEHRA. Under a special transition rule, for 2017, the notice must be provided within 90 days after the law is enacted.

The notice must include the following:

- The amount of the permitted benefit under the QSEHRA.
- A statement that the employee must inform the Marketplace of the QSEHRA benefit if applying for an advance premium tax credit through the public health insurance Marketplace.
- A statement that if the employee does not have minimum essential coverage for a month, they may be subject to an individual shared responsibility penalty and the QSEHRA benefit may become taxable to them.

Failing to provide the required notice may subject the employer to penalties of $50 per employee, up to $2,500 per year.

In addition, employers will be required to report the amount of any QSEHRA benefit on an employee's Form W-2.

Impact on Marketplace Premium Tax Credits

If an employee who is eligible for a QSEHRA enrolls in an individual health plan through the public health insurance Marketplace, the amount of any premium tax credit for which they are otherwise eligible will be reduced by the amount of the benefit available under the QSEHRA.

The Act was sent to President Obama last week for his expected signature. While the legislation comes a little late in the year for employers that have already implemented plans for 2017, it nonetheless comes as welcome relief to some small employers and provides a potential alternative to the traditional group health plan option.