

EXPERT UPDATE



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HRAs for Small Employers without Group Health Coverage

The 21st Century Cures Act, which was enacted on December 13th of this past year, includes provisions that permit small employers without group health coverage to reimburse employees for qualified health care expenses and individual health insurance premiums. Small employers that want to provide tax favored reimbursements will be required to set up a “qualified small employer health reimbursement arrangement” (QSEHRA) that meets specific criteria for eligibility, plan design, reporting and disclosure.

The information we are providing below about the new QSEHRA is subject to modification as additional guidance is provided.

Employer Characteristics

- Must not be an Applicable Large Employer as defined by the Affordable Care Act (ACA) Play or Pay regulations (Code § 4980H(c)(2)). This means the employer must have less than 50 full-time employees, including full-time equivalents in the prior calendar year.
- Must not offer a group health plan to *any* of its employees.

Eligibility

- Must be offered to all full-time employees working more than 90 days *unless* the employees are under age 25, part of a collective bargaining agreement for health coverage, part-time or seasonal employees.
- Full-time employees are those working 30+ hours per week (130 hours per month).
- Generally all full-time eligible must be offered the same benefit under the same terms and the plan must not be discriminatory.

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QSEHRA Provisions

- The QSEHRA involves employer contributions *only* (no salary reductions are permitted).
- The program may be designed to reimburse individual health premiums only or out-of-pocket health expenses only. The plan may also be designed to include coverage for both.
- Company annual contributions may be determined by the employer but can't exceed \$4,950 for single or \$10,000 for family for 2017. Future caps will be indexed.
- Employees must provide proof of coverage for reimbursement of individual insurance premiums (including Medicare Part B and D) and eligible health care out-of-pocket expenses. Refer to [IRS Publication 502](#) for qualified out-of-pocket expenses.
- Reimbursement to employees may vary in accordance with variation in price of the policies purchased (age, family members covered, etc.).
- Employer is permitted to pro-rate benefits for employees eligible for only part of the year.
- Coverage must be offered by the 91st day after hire.
- QSEHRA is not considered a group health plan and is therefore not subject to COBRA.

Documentation

- Employer must maintain records of eligible expenses reimbursed by the QSEHRA.
- The QSEHRA provisions must be illustrated in a written document (similar to ERISA Plan Document).

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Participant Notice

- A notice must be provided to participants that:
 - Describes the amount of the benefit available to the participant under the QSEHRA for the year;
 - Includes information indicating that employees must report the QSEHRA benefit to the Exchange if they apply for an Exchange premium subsidy; and
 - Provides a statement that if the employee is not covered under a Minimum Essential Coverage (MEC) plan for any month then QSEHRA reimbursements may need to be included in the individual's gross income for tax purposes and the employee may be faced with the individual mandate penalty.

- The notice must be distributed 90 days prior to each new plan year and no later than the 1st day of eligibility for new hires.
- Failure to provide the notice could result in an employer penalty of \$50 for each employee, up to \$2,500 annually. Transition relief has been issued for notices provided in 2017 if the notice is distributed no later than 90 days after the date of enactment – which is March 13, 2017.
- Employees' W-2 must illustrate the nontaxable benefit beginning 2017 (Forms W-2 issued in January 2018 for 2017). Waiting for guidance as to how this will be reported.

Small employers that are looking to roll out a QSEHRA may want to consider hiring a third party vendor to review and approve claims since any health claim submitted that is eligible in accordance with Code § 213 as summarized in [Publication 502](#) should be reimbursed. Additionally, amounts reimbursed for the year will need to be monitored properly so QSEHRA

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coverage does not exceed the regulated maximum benefit. We will provide more information as additional guidance is released. Please feel free to contact your HBI consultant or analyst if you have questions.

Resources: [21st Century Cures Act](#) - refer to "Title XVIII – Other Provisions"

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