Employer-Reimbursed Health Insurance Premiums Are Back

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Once upon a time, instead of sponsoring a group health plan, an employer could tell its employees to get their own health insurance, reimburse their premium costs up to an employer-determined limit, and call it a day.

Then the Affordable Care Act arose and the government determined that these arrangements violate the law's prohibition on annual limits, a requirement that applies to all employer health plans, not only those of large employers. This all changed on December 7, 2016 when the 21st Century Cures Act amended the Affordable Care Act to permit the practice again for small employers starting in 2017.

Under the new law, employers with fewer than 50 full-time equivalent employees can once again reimburse employees for their own health insurance premiums as long as the arrangement satisfies the rules to be a "qualified small employer health reimbursement arrangement" or "QSEHRA."

In addition to being sponsored solely by small employers, the QSEHRA must be funded solely by employer contributions (which also excludes salary deferral contributions from employees) that do not exceed $4,950 per year for employee-only expenses and $10,000 a year for employee plus family expenses (prorated for employment during less than the entire year), must require actual proof that the employee spent the employer contribution on premiums for health insurance or other unreimbursed medical expenses, and must be available to all employees of the employer who have met any age (cannot be older than age 25) and service (cannot be longer than 90 days) or employment status (part-time and seasonal employees may be excluded) requirements. Another key requirement is that the sponsoring employer cannot sponsor a group health plan for any of its employees if it wants to establish a QSEHRA.

Reimbursements for health insurance premiums are tax-free to the employees, but only if the coverage is at least minimum essential coverage under the Affordable Care Act.

In addition to premiums for individual or family insurance coverage under a private health insurance policy, premiums for coverage under the Affordable Care Act marketplace health insurance *are* eligible for reimbursement under a QSEHRA. The reimbursement available from the employer will affect the employee's eligibility for premium subsidies and may eliminate the subsidy totally if the marketplace coverage is affordable under a formula established under the new law. Accordingly, a small employer can tell its employees to get coverage on their own through the marketplace, and the employer will reimburse the costs, up to the permitted limits.

On the other hand, a QSEHRA *cannot* reimburse employees for premiums for coverage under any group health plan, such as an employee's coverage as a dependent on a spouse's employer's plan.

The employer must notify employees about the arrangement at least 90 days before the new year. The notice must also tell employees that they must inform the marketplace about the reimbursements available to the employees if they are going to apply for marketplace coverage. The reimbursement will also be reportable on Forms W-2 in a special block for this type of tax-free reimbursement.

The new law also explicitly provides that a QSEHRA is not a group health plan for most purposes under ERISA or the Internal Revenue Code and does not have to offer COBRA or meet discrimination tests based on the use of benefits offered.

For small employers, particularly those with employees with claims histories that cause group health insurance premiums to be very expensive, eliminating the group health plan and establishing a QSEHRA can be an extremely cost-efficient option that will still protect their employees' abilities to obtain health coverage as long as marketplace insurance is available.

For further information on this topic, please contact a member of McGlinchey Stafford's Labor & Employment team.

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