HR knowledge

e-Alert: IRS issues new guidance on Qualified Small Employer HRAs

On Oct. 31, 2017, the Internal Revenue Service (IRS) issued Notice 2017-67 to provide comprehensive guidance on a variety of topics regarding qualified small employer health reimbursement arrangements (QSEHRAs). Small employers that do not maintain group health plans may establish QSEHRAs for their employees, effective for plan years beginning on or after Jan. 1, 2017. Unlike other health accounts, QSEHRAs can be used to reimburse employees for their health insurance premiums.

Background

Beginning Jan. 1, 2017, employers that are not applicable large employers under the Affordable Care Act and do not maintain group health plans may sponsor QSEHRAs to pay for employees' individual health insurance policies and other out-of-pocket medical expenses on a tax-favored basis. To qualify as a QSEHRA, the reimbursement arrangement must meet the following criteria:

- The QSEHRA must be **funded solely by the employer**. Employees cannot make their own salary reduction contributions.
- QSEHRA payments or reimbursements must be limited to medical care expenses incurred by the employee or the employee's family members, after the employee provides **proof of coverage**.
- The maximum amount of payments and reimbursements from the QSEHRA for any year cannot exceed $4,950 (or $10,000 for QSEHRAs that also reimburse medical expenses of the employee's family members). These amounts are adjusted annually for inflation. For 2018, the total amount of payments and reimbursements from a QSEHRA cannot exceed $5,050 ($10,250 for family coverage).
- The QSEHRA must be provided on the **same terms** to all eligible employees.

IRS Guidance

Notice 2017-67 provides detailed guidance on a wide range of topics for QSEHRAs, including the criteria for QSEHRAs, the tax consequences of the arrangement, the impact on eligibility for health savings account (HSA) contributions and the written notice requirement.

The guidance applies for **plan years beginning on or after Nov. 20, 2017**, although QSEHRAs established before that date may rely on this guidance. Also, employers that established QSEHRAs for 2017 in accordance with a reasonable good faith interpretation of the law may continue to operate their QSEHRAs based on those terms until the last day of the plan year that began in 2017.

Written Notice

An employer funding a QSEHRA for any year must provide a **written notice** to each eligible employee at least 90 days before the beginning of each year. For employees who become eligible to participate in the QSEHRA during the year, the notice must be provided by the date on which the employee becomes eligible to participate. If an employer fails to provide this notice for a reason other than reasonable cause, the employer may be subject to a penalty of $50 per employee for each failure, up to a maximum annual penalty of $2,500 for all notice failures during the year.

Action Steps

Small employers with QSEHRAs should confirm that their QSEHRAs comply with this new guidance. Notice 2017-62 applies to plan years beginning on or after Nov. 20, 2017. In addition, employers may need to provide their initial written notice by Feb. 19, 2018.

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