

## Congress Gives Small Employer HRAs the Green Light

### Article Highlights:

- 21<sup>st</sup> Century Cures Act
- Background
- Qualified Small Employer
- Eligible Employees
- Reimbursement Limits
- Transitional Relief

Congress has approved the 21<sup>st</sup> Century Cures Act, which includes a provision allowing small employers to reimburse their employees for medical expenses under a health reimbursement arrangement without being liable for the draconian, \$100 per day penalty for violating the Affordable Care Act's rules. President Obama has indicated his approval of the bill.

**Background:** Stand-alone HRAs do not meet two key requirements of the ACA, as they:

- Limit the dollar amount of the insured person's annual benefits and
- Fail to provide certain preventive-care services without requiring cost-sharing.

As a result, under the IRS' interpretation of the ACA, employers are subject to a \$100 per day (maximum \$36,500 per year) excise tax penalty per employee.

**New Law:** Effective January 1, 2017, under the 21<sup>st</sup> Century Cures Act, qualified small employers that have an average of fewer than 50 full-time employees (including full-time-equivalent employees) and that maintain a qualified small-employer HRA will be exempt from the penalty. Under this act, a qualified small employer is one that:

- (1) Employs an average of fewer than 50 full-time employees (including full-time-equivalent employees) and does not offer a group health plan to its employees. The number of full-time-equivalent employees is determined by adding up all the hours that part-time employees worked in a given month and dividing by 120.
- (2) Provides the HRA on the same terms to all eligible employees. Eligible employees all those except:
  - a. Those who have not completed 90 days of service,
  - b. Those who have not attained the age of 25,
  - c. Part-time workers (generally those working an average of less than 30 hours per week),
  - d. Seasonal workers (generally those employed for 6 months or fewer during the year),
  - e. Those covered by a collective bargaining unit, and
  - f. Certain nonresident aliens.
- (3) Entirely funds the HRA (i.e., no salary-reduction contribution is made to the HRA).
- (4) Only reimburses the employees after being provided with proof of their medical expenses.

(5) Limits reimbursements to \$4,950 (\$10,000 where the plan includes family members) per year. Amounts are subject to inflation adjustments for years after 2016.

Although this law is effective January 1, 2017, transitional relief is generally provided for any HRA plan beginning on or before December 31, 2016.

Any medical-expense reimbursements that an employee receives from a qualifying HRA are excluded from that employee's income.

If you have questions, please give the office a call.