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A Must-Read For Small Employers Considering QSEHRAs

Substantial new guidance has been issued on QSEHRAs, the new type of health reimbursement arrangement described in Code Section 9831(d) that is exempt from ERISA's requirements that apply to group health plans. If an employee has minimum essential coverage (MEC), reimbursements from these accounts for medical expenses (including reimbursements for premiums for medical coverage) are excludable from income. Unfortunately, these arrangements are only available to a small employer that is not an "ALE" under the Affordable Care Act (meaning those with under 50 full-time equivalent employees in the prior year), that does not offer group health plan coverage to any of its employees, and that satisfies the very specific rules that apply to QSEHRAs.

The IRS Notice provides significant guidance in the form of 79 questions and answers and is a must-read for any employer considering offering these in 2018.

The guidance includes information on eligible employers (such as what happens if a small employer becomes an ALE during the year), which employees can be excluded from the QSEHRA (such as part-time employees), what it means to provide the QSEHRA on the "same terms" to eligible employees (all employees of employers in the same controlled group must be offered the QSEHRA on the same terms), the maximum dollar amount that can be provided ($5,050 for single coverage in 2018), the timing of the initial written notice requirement (the notice must be provided by the later of February 19, 2018, or 90 days before the first day of the plan year of the QSEHRA), information about the content of the notice and method of distributing the notice (electronic distribution which complies with certain requirements is permitted), substantiation and reimbursements of expenses (such as proof that the employee has MEC and proof of the expense itself), the Form W-2 reporting requirement (using Code FF in Box 12), the applicability of the PCORI fees to these arrangements (yes, it applies), and much other critical information necessary for establishing and maintaining a QSEHRA.

The new IRS Notice can be found here.