

# New Law Permits Employers to Reimburse Employees for Individual Health Insurance Premiums

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On December 13, 2016, President Obama signed the 21<sup>st</sup> Century Cures Act into law. The new law will allow small employers that do not offer any group health plan to their employees to adopt a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA) to reimburse employees for premiums they pay for individual insurance policies. The new law is effective January 1, 2017.

**NOTE: QSEHRAs are an exception to ACA requirements and are not part of the ACA. Even if the ACA is repealed and replaced, it is expected that QSEHRAs will remain.**

## Background

Under the Affordable Care Act (ACA), small employers (those with less than 50 full-time employees, counting full-time equivalents) are not subject to penalties for failing to provide group health plan coverage to their employees. As a result of this exception, as well as the substantial costs of group health plan coverage, many small employers do not offer such coverage. However, many small employers have wanted to do *something* to help their employees, such as reimbursing employees for premiums they pay for health insurance policies obtained in the individual market. Unfortunately, 2013 guidance from the IRS (Notice 2013-54) ruled that such an arrangement violated the market reform provisions of the ACA, regardless of whether the reimbursements were treated as taxable or not. Since violations of the ACA market reform provisions subject an employer to excise taxes of \$100 per day per employee, sponsoring a prohibited reimbursement arrangement could have been a very costly mistake (although the new law also offers some relief in this area for 2015 and 2016).

## QSEHRA Requirements

The new law provides that a QSEHRA will not be considered a group health plan for ACA purposes, such that it will be exempt from the market reform requirements. To qualify as a QSEHRA, the program must meet the following requirements:

1. A QSEHRA must be funded exclusively with employer contributions; there is no provision for employee contributions (such as those made under a typical Section 125 cafeteria plan).
2. Reimbursements must be limited to \$4,950 per year for employee-only coverage and \$10,000 per year for family coverage.
3. A QSEHRA must be offered to all eligible employees on the same terms. (Exclusions are permitted for employees with less than 90 days of service, employees under age 25, employees covered by a collective bargaining agreement, non-resident aliens, and certain part-time and seasonal employees.)
4. The employer cannot offer group health plan coverage to any of its employees.

### **QSEHRA Notice Requirements**

An employer that adopts a QSEHRA must provide a written notice explaining the terms of the arrangement. The IRS has promised to issue a model notice that can be used to comply with this requirement. Employers will have 90 days after issuance of the model notice to comply for 2017, or they can elect to issue a notice before the model is published, based on a good faith interpretation of the law itself. For years after 2017, the notice must be issued at least 90 days before the beginning of each new plan year, e.g., the notice for 2018 will be due October 2, 2017.

### **Implementing QSEHRA**

An employer desiring to offer a QSEHRA will need a written plan document setting forth the terms of the arrangement, along with supporting documents. For a plan document package that meets the requirements of the law, please contact Gary Gunnett at (412) 288-2210 or [ggunnett@hh-law.com](mailto:ggunnett@hh-law.com).

*See also:* [www.hh-law.com/qsehra-plan-document/](http://www.hh-law.com/qsehra-plan-document/)

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