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New Law Allows Small Employers to Reinstate Stand-Alone Premium Reimbursement HRAs

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With the health and welfare benefit plan industry eyeing potential regulatory changes under a Trump administration, it was President Barack Obama who signed into law a new rule that partially restores health plan flexibility restricted by the Affordable Care Act (ACA). The 21st Century Cures Act (Act) allows small employers to establish arrangements that reimburse employees for premiums on health coverage that is not maintained by the employer (e.g., coverage obtained by an employee on a state exchange/marketplace).

Background. In 2013, the IRS released guidance stating its position that an employer arrangement designed to reimburse premiums for non-employer maintained health coverage (on a pre-tax or after-tax basis) is a group health plan that violates, by design, certain ACA reforms. This guidance was widely viewed as foreclosing circumvention of the ACA employer mandate (for large employers) through use of an HRA integrated with non-employer maintained health coverage. However, the guidance applied to all employers, much to the ire of small employers, many of whom relied on these arrangements to provide a pre-tax cost-effective health benefit. Certain transition relief was provided for small employers, but the relief ended in mid-2015. As a result, many small employers were left out in the cold. Small employers responded in different ways. Some adopted stipend or similar programs, whereby employees would be paid additional taxable compensation without strings attached (the employee could decide to use the amounts for health coverage or not). The end-result, however, was that tax-favored health benefits were generally limited to employers capable of sponsoring a major medical health plan.

21st Century Cures Act. The Act permits certain small employers to sponsor arrangements that will reimburse employees on a pre-tax basis (if certain conditions are met) for amounts incurred for independent (non-employer maintained) health coverage, including health insurance premiums. These arrangements, called *qualified small employer health reimbursement arrangements* (QSEHRAs), have to meet the following requirements:

- only small employers may sponsor (employers who did not have an average of 50 full-time employees, including full-time equivalents, in the prior year);
- the employer may not otherwise offer a group health plan to any employees;

- the employer must offer the QSEHRA to all employees (with certain limited exceptions);
- the maximum annual benefit is \$4,950 for reimbursements of employee-only coverage and \$10,000 for reimbursements of family coverage;
- the reimbursement will be nontaxable if the eligible employee demonstrates that he or she has minimum essential coverage; and
- notice containing required disclosures must be provided to eligible employees.

The rule changes are intended to be effective January 1, 2017. Please contact any member of our Benefits Law Group if you have any questions regarding this or any employee benefit issues.

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