Notice to Employees Under New HRA Rules

Cross References

- Notice 2017-20

Under the 21st Century Cures Act enacted on December 13, 2016, an eligible employer may provide a qualified small employer health reimbursement arrangement (QSEHRA) to eligible employees without violating the market reform rules for group health plans under the Affordable Care Act (ACA). An eligible employer is generally one with fewer than 50 full-time equivalent employees that does not offer a group health plan to any of its employees. Under a QSEHRA, after an eligible employee provides proof that he or she has health insurance coverage, payments or reimbursements may be made to that employee tax-free for medical expenses incurred by the employee or a family member of the employee. Payments and reimbursements for any year cannot exceed $4,950 per employee or $10,000 per employee if the arrangement includes the employee's family members.

An employer is generally required to furnish a written notice to its eligible employees at least 90 days before the beginning of a year for which the QSEHRA is provided. If an employee is not eligible to participate as of the beginning of the year but later qualifies, the due date for furnishing a written notice is the date on which the employee is first eligible to participate. The written notice must include:

- A statement of the amount that would be the eligible employee's permitted benefit under the arrangement for the year,
- A statement that the eligible employee should provide the amount of the employee's permitted benefit to any health insurance exchange to which the employee applies for advance payment of the premium tax credit, and
- A statement that if the eligible employee is not covered under minimum essential coverage for any month, the employee may be liable for an individual shared responsibility payment under IRC section 5000A for that month and reimbursements under the QSEHRA may be taxable to the employee.

Under IRC section 6652(o), for employers that provide a QSEHRA to their eligible employees for a year beginning in 2017, there is no penalty for failing to timely furnish the initial written notice if the notice is furnished to eligible employees by March 13, 2017.

Transition relief. The IRS recently issued Notice 2017-20 that extended the March 13, 2017 deadline. The written notice is not required to be furnished until after the IRS furnishes new guidance that will specify a new deadline for providing the initial written notice. No penalties will be imposed for failure to provide the initial written notice before the extended deadline specified in that guidance. Employers that furnish the QSEHRA notice to their eligible employees before further guidance is issued may rely upon a reasonable good faith interpretation of the statute to determine the contents of the notice.