



## CLIENT ALERT

Employee Benefits Update

December 12, 2016

### HRA Relief On Its Way For Small Employers

The 21<sup>st</sup> Century Cures Act (“**H.R.34**”), which is awaiting the President’s signature, includes a provision which allows small employers to use a Health Reimbursement Account (“**HRA**”) to reimburse employees for medical care (including reimbursement or payment of premiums for individual health insurance policies) instead of offering its employees a group health plan.

The Internal Revenue Service (“**IRS**”) has previously taken the position in Notices 2013-54 and 2015-17 that an employer cannot reimburse employees for individual health insurance premiums. It considers the reimbursement arrangement (called an “**employer payment plan**”) a group health plan which does not comply with the market reforms of the Affordable Care Act (“**ACA**”) and can access a \$100 per day penalty for each employee who receives reimbursement (up to a maximum of \$36,500 per year).

The Act overrides this position by excluding from the definition of “group health plan” a “qualified small employer health reimbursement arrangement.” Such an arrangement must meet all of the following requirements:

- The employer cannot be an “applicable large employer” under the ACA (generally, an employer with less than 50 full-time or full-time equivalent employees).
- The employer cannot offer a group health plan to any of its employees.
- The HRA must be provided to all eligible employees on the same terms. However, there can be differences in permitted benefits based on age and family size variations in individual policy premiums.
- The HRA can only be funded by employer contributions. Salary reduction contributions are not allowed.
- The HRA must provide for the reimbursement of medical expenses incurred by an eligible employee or the employee’s family members.
- The amount of payments or reimbursements for a year cannot exceed \$4,950 for an employee (or \$10,000 for a family). These amounts are prorated for partial year coverage and will increase with the cost of inflation.

The employer must provide a notice to employees before the beginning of each year including, among other things, the amount of the permitted benefit and a statement that, if the employee does not have minimum essential coverage, he or she may be subject to the ACA Individual Mandate penalty and the reimbursements under the arrangement may be taxable.

The transitional relief under Notice 2015-17 for non-compliant employer payment plans has been extended so that the ACA penalties described above will not be applied for plan years beginning on or before December 31, 2016.

The new rules will be effective for years beginning after December 31, 2016. It is unclear at this time how the possible repeal of ACA would impact these new qualified small employer health reimbursement arrangements.

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If you have any questions about this Alert, please feel free to call (919.781.4000) or e-mail your Wyrick Robbins contact or one of the following members of our Employee Benefits & Executive Compensation group: **Gray Hutchison** ([ghutchison@wyrick.com](mailto:ghutchison@wyrick.com)) or **Richard Rogers** ([rrogers@wyrick.com](mailto:rrogers@wyrick.com)).

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