



January 10, 2017

Congress Passes 21st Century Cures Act – HRA Expansion and ACA Penalty Relief for Small Employers

On December 13, 2016, President Obama signed into law the 21st Century Cures Act. Effective for plan years beginning after December 31, 2016, the legislation allows qualified small employers to offer standalone health reimbursement arrangements (HRAs) to employees who purchase their own health plan. The legislation also provides relief from certain Affordable Care Act (ACA) penalties that previously applied when small employers provided payment for non-ACA-compliant healthcare.

The 21st Century Cures Act allows small employers to pay single employees up to \$4,950 and families up to \$10,000 annually for medical expenses (amounts to be adjusted annually for inflation). To qualify, employees must provide proof of minimum essential coverage and small employers must meet several criteria, including:

- The employer must not be an applicable large employer (ALE).
 - Average of less than 50 full-time and full-time equivalent employees, excluding seasonal employees, in the prior calendar year.
- The employer cannot offer a group health plan to any of its employees.
- The qualified HRA must
 - Be provided on the same terms to all eligible employees.
 - Be funded solely by the employer.
 - Pay or reimburse employees for medical expenses defined in IRC §213(d), following proof of coverage.
- The HRA cannot be intended solely to benefit owners, executives, or highly compensated employees.

The new law also encompasses several notice and reporting requirements, effective for years beginning after December 31, 2016, including:

- Small employers must give annual notice to eligible employees at least 90 days before the start of the year or the employee's eligibility date, or within 90 days after the law's enactment, whichever is later. The notice must:
 - State the amount of the employee's allowed benefit.
 - Instruct the employee to disclose the permitted amount to any health insurance exchange to which the employee applies for advanced payment of the premium assistance tax credit.
 - Include a warning if the employee does not have the minimum essential coverage for any month, the employee might be subject to tax for that month, and reimbursements under the arrangement may be includible in gross income.
- Small employers must report the value of these benefits on employees' Forms W-2 beginning with tax year 2017.

Employers that fail to provide required notice will be subject to a \$50 per employee, per incident fee, up to a \$2,500 maximum per calendar year. Under the new law, employers will no longer be subject to IRS fines for reimbursing or paying their employees' healthcare premiums if they use the qualified HRA. Previously, small employers that paid these premiums could have been assessed a fine of \$100 per day, per worker, pursuant to IRS §4980D.

Should you have any questions about how the 21st Century Cures Act may impact your organization and how to ensure compliance, please do not hesitate to contact our office.

Sincerely,

HEINOLD BANWART, LTD.