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Introducing the Individual Coverage HRA for school districts

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On June 13, 2019, the federal government issued lengthy and complex regulations that both expand and limit the circumstances under which an employer may reimburse its employees' individual health insurance premiums. This article introduces these regulations and takes a big picture look at their impact under the Affordable Care Act (ACA) and a school district's other post-employment benefits (OPEB) obligations.

By way of background, in 2013 the federal government told employers they could not reimburse employees' individual health insurance premiums without being subject to hefty tax penalties for violations of certain Affordable Care Act requirements relating to annual dollar limits and preventive care coverage. School districts enjoyed an exception to this general rule in the form of a retiree-only Health Reimbursement Arrangement (HRA). An HRA that could only benefit retirees could allow for a district to reimburse retirees for the cost of individual coverage in a tax-free fashion. This has proven to be a win-win alternative to offering retirees traditional health coverage.

The new regulations create a new HRA product for employees that also serves as an exception to the 2013 rules. Under the new regulations, an employer that is willing and able to comply with numerous requirements may reimburse its employees' individual health insurance premiums through what the federal government is calling the "Individual Coverage HRA" (or ICHRA). The new guidance does not eliminate retiree-only HRAs, nor employee HRAs integrated with group health plans. Rather, the new guidance adds a new type of HRA to the roster: the ICHRA.

ICHRA requirements

The requirements imposed on ICHRAs are challenging to meet, and the extent of the challenge will depend on your district's unique workforce and existing benefit structure. Here are some highlights of these requirements:

The no-choice rule

If your district offers an ICHRA to an employee, it cannot offer the employee a choice between the ICHRA and a traditional group health plan.

No forced ICHRA participation

An employer cannot force ICHRA participation and must give employees the option to opt out of coverage and waive future HRA reimbursements at least annually.

Class rules

A unique feature of the ICHRA rules are a complex set of rules that limit how your district can offer an ICHRA to classes of employees. The purpose of these rules is to limit the extent to which an employer can use an ICHRA to shift older or sicker workers out of traditional health plans into the individual insurance market. These rules are summarized below.

- If your district offers an ICHRA, it must offer the ICHRA to one or more permissible "classes" of employees. The permissible classes of employees are defined by law. Your district cannot select and define its own classes. Here are the permissible classes:

    1. Full-time employees

2. Part-time employees
3. Employees paid on a salary basis
4. Non-salaried employees (hourly employees)
5. Employees whose primary employment site is in the same insurance rating area
6. Seasonal employee
7. Employees in an ACA-compliant waiting period
8. Non-resident aliens
9. Temporary employees employed by a temporary agency
10. Union employees covered by a collective bargaining agreement if accident and health benefits were the subject of good faith bargaining
11. A combination of two or more of the above classes.

- If an employer offers an ICHRA to employees within a permissible class, it must offer the ICHRA in the same amount and on the same terms to all employees within that class, subject to several exceptions. These exceptions allow the amounts provided in an ICHRA to a class of employees to vary based on employees' ages (i.e., more dollars available as age increases) and number of dependents (i.e., more dollars available as number of dependents increases). In addition, an employer may "grandfather" a class of employees in a traditional group health plan and offer an ICHRA only to new employees hired in that class. Keep in mind that depending on what benefits the ICHRA ultimately offers, it may still have to comply with non-discrimination rules under Internal Revenue Code Section 105(h).

The ICHRA and the Affordable Care Act

Employer shared responsibility mandate

An ICHRA is considered a group health plan and thus is "minimum essential coverage" for purposes of the employer shared responsibility mandate. Thus, if an applicable large employer offers an ICHRA and/or other group health plan coverage to at least 95% of its ACA-full-time employees, it can avoid the "No Offer" penalty under the employer mandate. And, if the ICHRA is "affordable," the employer can avoid the "Unaffordability" penalty under the employer mandate for employees offered the affordable ICHRA. Although the regulations contain guidance for how to determine ICHRA affordability for purposes of premium subsidies, the government has not yet issued final guidance for employers to determine whether the ICHRAs they offer are "affordable" for purposes of the employer mandate.

Premium subsidies for individual health insurance

An employee who is offered an affordable ICHRA will not qualify for premium subsidies for individual health insurance. An employee who actually enrolls in an ICHRA, regardless of whether or not it is affordable, will not qualify for premium subsidies. On the other hand, an employee offered an unaffordable ICHRA who does not enroll in the ICHRA may be able to qualify for premium subsidies.

The ICHRA and OPEB

As many are aware, a retiree who comes back to work for a district on a continuous or regular basis will not be able to receive benefits under a retiree-only HRA that reimburses the cost of individual coverage premiums. Unfortunately, the new ICHRA does not appear to solve this problem as the regulations do not provide a way for former employees to be in their own class receiving their own benefits. It might be possible to offer an ICHRA to a rehired retiree who returns to work as an employee, but only if they happen to fall into one of those permissible classes discussed above. In summary, the ICHRA is a potentially useful new product only for those districts looking to carve out a small slice of their employees from being offered health coverage; frankly, the current retiree-only HRA is still the most viable way to provide retirees with tax-free reimbursable individual coverage.

We will continue to monitor developments and issued guidance. In the meantime, clients with access to the HR Hotline can contact us with any questions.