



WHAT YOU NEED TO KNOW



Qualified Small Employer Health Reimbursement Arrangements and ERISA

Starting on January 1, 2017, certain small employers have the option to reimburse individual health coverage premiums up to a dollar limit through Qualified Small Employer Health Reimbursement Arrangements (QSE HRAs) under the [21st Century Cures Act](#) (Cures Act).

The Cures Act amends the Employee Retirement Income Security Act of 1974 (ERISA) to exclude QSE HRAs from the ERISA definition of group health plan; however, the Cures Act does not specifically exclude QSE HRAs from the rest of ERISA.

Small employers that plan to offer QSE HRAs should be cautious before presuming that ERISA would not apply to a reimbursement arrangement. ERISA generally covers employee welfare benefit plans that are established or maintained by any employer engaged in interstate commerce or in any industry or activity affecting interstate commerce.

Under the Cures Act, QSE HRAs are excluded from one of ERISA's two definitions of "group health plan." QSE HRAs are excluded from the [definition of group health plan](#) that applies only to ERISA's Title I, Part 7, that governs group health plan requirements. In summary, Part 7 includes requirements relating to portability, access, renewability, mother/newborn benefits, parity in mental health and substance use disorder benefits, reconstructive surgery, dependent student coverage, and additional market reforms.

Outside of the group health plan definition above, ERISA provides a [broader definition](#) of an employee welfare benefit plan: generally, it is any plan, fund, or program established or maintained by an employer to provide participants or their beneficiaries with medical, surgical, or hospital care or benefits, through the purchase of insurance or otherwise.

Further, in the legislative history of QSE HRA's exclusion from ERISA's group health plan definition, the House Committee on Ways and Means' [Report](#) stated, as part of recommending the bill's passage: "While these arrangements are not considered group health plans for purposes of the employer penalty, H.R. 5447 is not intended to change the extent to which these plans are employee welfare benefit plans under ERISA."

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Because QSE HRAs are new, the issue of whether the remainder of ERISA applies to QSE HRAs remains undetermined by an administrative agency or court. In consideration of the limited ERISA group health definition exclusion and the law's legislative history, a risk-averse small employer should treat a QSE HRA as an employee welfare benefit plan covered under ERISA and comply with applicable ERISA requirements such as having a written plan document and summary plan description as well as following ERISA's fiduciary and other rules.

A small employer who intends to offer a QSE HRA without complying with ERISA's employee welfare benefit plan requirements should consult with its attorney before proceeding.

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