

# HEALTH INSURANCE FOR U.S. EMPLOYEES - A NEW OPTION FOR AN OLD PROBLEM

*Canadian Client Hodgson Russ Alert*  
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There is good news in the world of U.S. health insurance laws, at least for Canadian companies with fewer than 50 full-time U.S. employees. Effective this year, it is now possible to directly reimburse employees for the cost of obtaining a policy on the open market, with the same favorable tax treatment as the provision of a policy through an employer-sponsored plan.

This change may help address a long-standing challenge facing many Canadian companies with small U.S. workforces who wish to assist their U.S. employees with the cost of obtaining coverage, but do not want the administrative burden and expense of sponsoring and administering a tax qualified plan.

Previously, reimbursing employees for health insurance that the employees obtain on their own was generally prohibited under IRS guidance related to the Affordable Care Act. However, an exception now exists to allow certain employers to do just that. The vehicle is called a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA). Through a QSEHRA, an eligible employer may reimburse its employees for eligible medical expenses, including individual health insurance premiums. The expenses reimbursed by the employer are deductible and the amounts reimbursed are not taxable to the employee.

Of course QSEHRAs have their own rules. For example, the company sponsoring the plan must have fewer than 50 full-time U.S. employees, must not sponsor another group health plan, and the reimbursable amounts are capped and must be the same for all eligible employees. Nonetheless, QSEHRAs represent another option for employers looking to provide health coverage to U.S. based employees.

QSEHRA details:

- Employers must have, when combined with other related entities, fewer than 50 U.S., full-time employees (including full-time equivalents) in the prior calendar year.
- Employers sponsoring a QSEHRA may not offer another group health plan.
- The annual maximum reimbursement under a QSEHRA is currently \$4,950 for an individual, or \$10,000 for a family.

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- All eligible employees must be able to receive the same reimbursement under the plan.
- There is an annual notice requirement that must be sent to employees.
- There are annual reporting and filing requirements with the IRS (IRW-2 reporting).

And there may be more news on QSEHRAs in the coming months. On October 12, 2017, President Trump issued an Executive Order that may have the effect of expanding the scope of business who can utilize this option. In addition, on October 31, 2017, the IRS issued Notice 2017-67 providing much greater administrative and procedural detail on these types of arrangements. We track these developments closely and will issue follow-up alerts if changes become effective.

Employers interested in establishing a QSEHRA should contact their Hodgson Russ attorney regarding the preparation of the necessary plan documents.