



Small Employer HRA - 21st Century Cures Act

Presented by: Mary Bauman

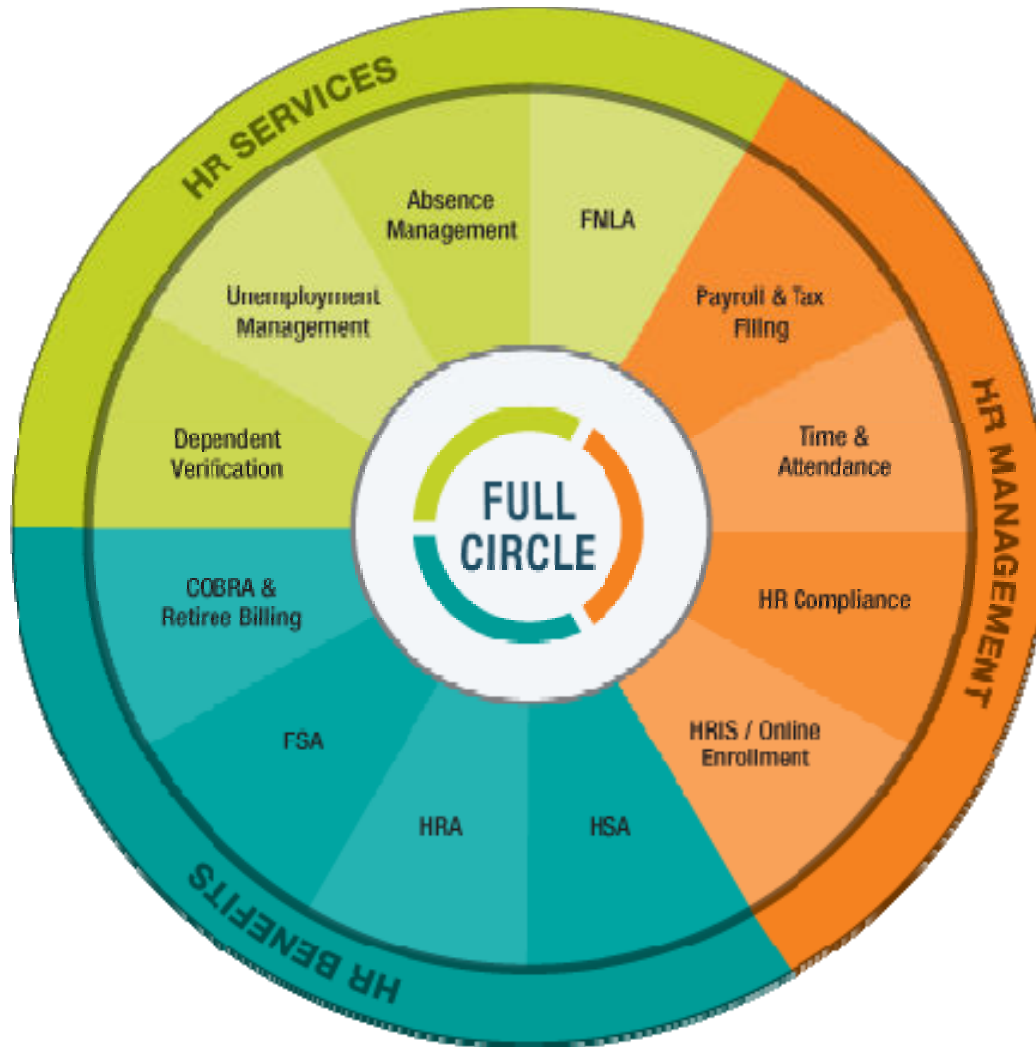


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Overview



- On December 13, 2016, President Obama signed into law the 21st Century Cures Act
- The new law reverses a prohibition on small employer funding of individual health insurance premiums

Overview



- This small employer issue is one of many health care issues addressed by the new legislation
- The Act also includes funding for cancer and Alzheimer's research, opioid abuse programs and mental health treatment



The Problem to be Fixed



- Under prior guidance, the IRS indicated that employers cannot pay for the cost of individual health insurance for employees or reimburse the premium cost without violating the ACA “market reforms”
- Violation of the market reforms triggers a \$100 per day per affected individual excise tax



The Problem to be Fixed



- Many objected to the IRS's position, particularly with respect to small employers not subject to the pay or play mandate to offer group health coverage



“QSEHRA”



- Qualified Small Employer Health Reimbursement Arrangements (“QSEHRA”)
- Under the new Act, beginning in 2017, small employers can establish “qualified small employer health reimbursement arrangements” or “QSEHRAs,” and such an arrangement will not violate the market reforms



“QSEHRA”



- Here are the key requirements:
 - To establish a QSEHRA, the employer must be a small employer not subject to the pay or play mandate (i.e., must have fewer than 50 full-time employees and full-time employee equivalents) **and** the small employer must not offer a group health plan to its employees



“QSEHRA”



- All full-time employees must be eligible for the QSEHRA after a waiting period of no more than 90 days of service with certain permitted exclusions, such as for employees under age 25 and union employees
- The QSEHRA must be funded solely by the employer and no employee contributions are permitted



“QSEHRA”



- The maximum reimbursement under the QSEHRA is capped
- The annual limit is \$4,950 but may be increased to \$10,000 if the QSEHRA also provides benefits for the employee’s family members
 - The maximum annual benefit is prorated for employees not covered by the QSEHRA for the entire year (e.g., new hires)
 - The maximum may be increased in future years for changes in the cost of living



“QSEHRA”



- The QSEHRA can reimburse any medical expenses as defined in Section 213(d) of the Internal Revenue Code including, but not limited to, the cost of individual health insurance
- Reimbursement is tax-free to the employee provided the employee is enrolled in minimum essential health coverage



“QSEHRA”



- The QSEHRA must be offered on the same terms and conditions to all eligible employees
- However, the QSEHRA benefit can vary based on the cost of individual insurance in the relevant market due to age and number of enrolling family members



“QSEHRA”



- Small employers must provide eligible employees with an annual notice at least 90 days before the beginning of the year regarding the QSEHRA
- For 2017 employers have until March 13 to provide the notice



“QSEHRA”



- The notice must include the following:
 - A description of the amount of the benefit
 - A statement that the employee should disclose the amount of the benefit to the exchange when applying for a premium tax credit (and that the QSEHRA benefit will offset the amount of the employee’s premium tax credit)



“QSEHRA”



- A statement that if the employee is not enrolled in minimum essential coverage, he or she may be subject to the individual mandate penalty (and that the QSEHRA reimbursements will be taxable)
- If the employee becomes eligible after the beginning of the year, the notice must be provided by the date the employee initially becomes eligible



“QSEHRA”



- The Act also carves out QSEHRAs from ERISA and the COBRA continuation coverage requirements
- As a result, even if a small employer has 20 or more employees and is subject to COBRA, COBRA rights will not extend to the QSEHRA if there is a termination of employment or other circumstance that would ordinarily constitute a COBRA qualifying event



“QSEHRA”



- The DOL, HHS and IRS issued an FAQ on December 20, 2016 interpreting one provision of the new Act
 - Specifically, the relief to small employers in IRS Notice 2015-87 (to allow the reimbursement of individual health premiums through June 30, 2015) is extended through December 31, 2016



Questions



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Presenter Contact Information



Mary V. Bauman

616.831.1704

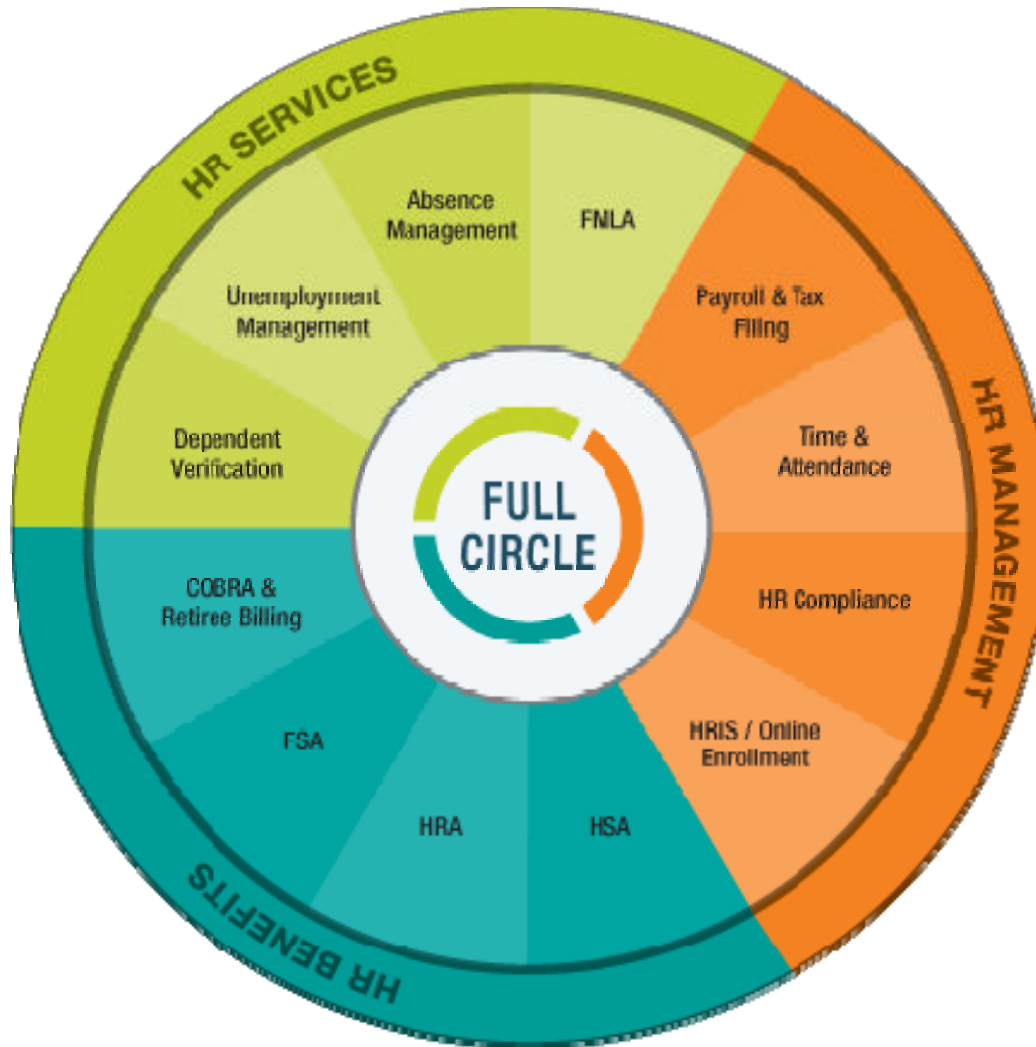
baumanm@millerjohnson.com

LinkedIn:

<https://www.linkedin.com/in/mary-bauman-17205b2>



Contact Us



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sales@basiconline.com



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