Welcome

Our Presentation

Will Begin at 12pm

- All viewers are muted. Audience cameras cannot be turned on.
- Who’s with us today? We invite you to share your nonprofit’s name in the chat box.

PRO BONO™
PARTNERSHIP / ATLANTA

How To Structure Health Care Stipends for Employees

PRO BONO PARTNERSHIP / ATLANTA

MORRIS, MANNING & MARTIN, LLP

Caroline Dorsey
Partner

Adam Snyder
Associate

March 20, 2025

Mission of Pro Bono Partnership of Atlanta

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

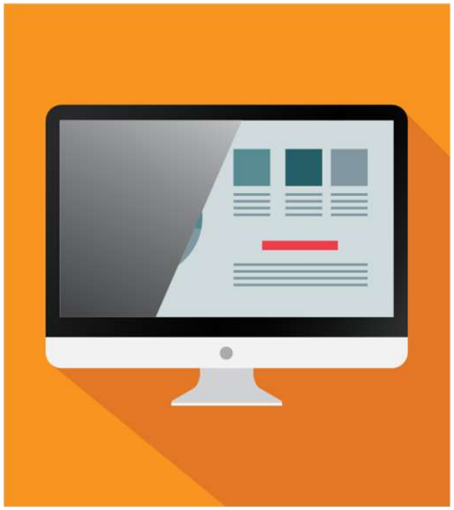
We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

PBPA Learning Center for Georgia Nonprofits

www.pbpatl.org/resources

ARTICLES

WORKSHOPS



WEBCASTS

PODCASTS

PRO BONO PARTNERSHIP/ATLANTA

Client Criteria

In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.
- Employ at least one paid staff person.

Visit our website at www.pbpatl.org to apply.

PRO BONO™
PARTNERSHIP / ATLANTA

Legal Information

This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

PRO BONO PARTNERSHIP / ATLANTA

Agenda and Overview

Topics covered today

Agenda

- Introduction & Purpose
- Legal Landscape
- Healthcare Stipends
- QSEHRAs
- ICHRAs
- Implementation & Administration

Introduction & Purpose

- Provide a quick overview of key Internal Revenue Code sections that affect employers when providing health care stipends for employees
- Introduce key legal terms and how they affect applicable rules and regulations
- Discuss the basics of health care stipends
- Give a brief overview of the history of health reimbursement arrangements
- Introduce two tax-advantaged ways to provide funding for employees' healthcare

PRO BONO PARTNERSHIP / ATLANTA

Legal Landscape

The Code, ACA, ERISA, and “Group Health Plans”

Legal Landscape

- **Internal Revenue Code (the Code)**
  - Sec. 105 – allows tax-free reimbursement of medical care and medical insurance expenses (health reimbursement arrangements)
  - Sec. 106 – excludes employer-provided coverage under a health plan from employees' gross income
  - Sec. 125 – permits employees to choose between taxable cash compensation and non-taxable contributions to insurance
  - Sec. 213(d) – defines "medical care" for several provisions of the Code

PRO BONO™
PARTNERSHIP / ATLANTA

Legal Landscape

- **Affordable Care Act (ACA)**
  - Applicable Large Employer – an employer who employed an average of at least 50 “full-time employees” on business days during the preceding calendar year
    - Determined each year based on the prior year’s headcount
    - Analysis is done on a “controlled group” basis
  - Full-time employee – for each calendar month, an employee employed on average at least 30 hours of service per week, or 130 hours of service per month
    - Determined under either the “monthly measurement method” or the “look-back measurement method”
  - Full-time equivalent – combination of employees who are not individually full-time employees but in aggregate are equivalent to a full-time employee
    - Combine the number of hours of service of all non-full-time employees for the month, excluding those with more than 120 hours of service and divide that sum by 120

PRO BONO™
PARTNERSHIP / ATLANTA

Legal Landscape

- **Affordable Care Act (ACA) (cont'd)**
  - Minimum Essential Coverage (MEC) – health insurance coverage that satisfies ACA requirements to provide essential health benefits and meet certain cost-sharing requirements
    - ACA requires each person to have minimum essential coverage for each month, qualify for an exemption, or make a payment when filing federal income taxes (*i.e.*, the "individual mandate")
  - Minimum Value (MV) – measures whether a plan offered by an employer offers adequate coverage
    - Must cover at least 60% of the average medical costs across a population and provide "substantial coverage" for inpatient and physician treatment
  - Prohibits employers from directly paying for an employee's health insurance premiums, except through compliant health reimbursement arrangements (IRS Notice 2013-54)

PRO BONO PARTNERSHIP / ATLANTA

Legal Landscape

- **"Group Health Plans" (GHPs)**
  - Defined under Sec. 2791 of the Public Health Service Act as employee welfare plans that provide medical care, through insurance or otherwise, to employees and their dependents
  - A plan that provides medical benefits is subject to the general compliance obligations of ERISA, and group health plans are also subject to COBRA, HIPAA, and other federal mandates (*e.g.*, the ACA)

PRO BONO™
PARTNERSHIP / ATLANTA

Legal Landscape

- **Employee Retirement Income Security Act of 1974 (ERISA)**
  - Title I – requires employers to establish and distribute plan documents and summary plan descriptions (SPDs), file annual Form 5500 disclosures, among other “reporting and disclosure” requirements
  - Fiduciary – ERISA requires each plan to have a named fiduciary, who has control over the plan’s operation, and deems each person or entity who exercises discretionary authority or control over the management of an employee benefit plan or its assets
  - Fiduciary duties – Title I duties, regular oversight of broker’s fees, review of service provider contracts, monitoring administration (non-exhaustive list)
  - Fiduciary liability – ERISA imposes “highest duty known to law” on plan fiduciaries and imposes personal liability for breaches of fiduciary duty

PRO BONO™
PARTNERSHIP / ATLANTA

Healthcare Stipends

Taxable money for health insurance and medical expenses

Healthcare Stipends

- Fixed and **taxable** amount of money for employees to pay for health insurance and other medical expenses
  - Could always be salary increase, but stipends increase visibility for employees
  - Can be added to normal paycheck or distributed as a separate check
- Employees can spend money on any healthcare expenses they desire
- Cannot be used if the employer has 50 or more full-time equivalent employees because it fails to meet ACA requirements

PRO BONO PARTNERSHIP / ATLANTA

Healthcare Stipends

- Best Practices
  - Offer the stipend to all employees and in a non-discriminatory way
    - Discrimination here is broad: whether an employee is married, whether an employee has coverage through a spouse, etc. should not be considered when determining who should get a stipend or how much their stipend is
  - Tax the stipend as regular compensation and count it towards regular rate of pay for overtime
  - Notify the employees of the stipend's terms and that it can be discontinued for any reason at any time
    - Be careful with the fact that offer letters can be contracts
  - As your organization grows, monitor your employee count for ALE status

Health Reimbursement Arrangements

Tax-advantaged ways to contribute to employees' health insurance

PRO BONO PARTNERSHIP/ATLANTA

Employer Payment Plans

- Reminder – GHPs are broadly defined, which can cause well intentioned arrangements to run afoul of several legal obligations
- "Employer Payment Plans" are a type of GHP where the employer either (a) reimburses employees for the cost of health insurance that the employees purchase; or (b) directly pays a premium for individual health insurance policies on behalf of the employees
  - These fail to meet the market reform requirements of the ACA and trigger excise taxes under Code Sec. 4980D, and the size of the employer does not matter

Health Reimbursement Arrangements

- Health Reimbursement Arrangement (HRA) –notional accounts for reimbursing employees' health care expenses
  - Differ from flexible spending accounts (FSAs) and health savings accounts (HSAs)
  - Must be funded solely by the employer
- Code Sections 105 and 106 exempt employees from taxation on the value of reimbursements and coverage under HRAs
- IRS Notice 2013-54 defines HRAs as Group Health Plans
  - Small employers began to offer "premium only HRAs" (novel concept)
- Qualified Small Employer HRAs (QSEHRAs) and Independent Coverage HRAs (ICHRAs) developed out of these premium only HRAs

PRO BONO™
PARTNERSHIP / ATLANTA

QSEHRAs

- Qualified Small Employer HRAs permit small employers to reimburse health insurance premiums and Sec. 213(d) medical expenses
  - Created by 21st Century Cures Act of 2016
- Who is a Qualified Small Employer?
  - Fewer than 50 full-time employees during the prior year
  - The Employer (or any related employer) cannot offer any group health plan
- Who can participate in a QSEHRA?
  - Must be made on the same terms to all eligible employees, but can vary amount by age and family size
  - Employees cannot “opt out;” QSEHRAs are provided, not offered
  - Employee must provide “proof of coverage” (insurance card; attestation)

QSEHRAs (cont’d)

- Must be funded through direct employer contributions
  - Employee salary reduction arrangements not allowed
  - 2025 Annual Limits: individual-$6,350; family-$12,800
- Subject to ERISA Title I
- Written notice required at least 90 days prior to each plan year
- Must be reported on Form W-2, Box 12 with code FF
- State insurance regulations must be checked
- COBRA does not apply

PRO BONO PARTNERSHIP / ATLANTA

ICHRAs

- Independent Coverage HRAs permit employers to reimburse health insurance premiums and Sec. 213(d) medical expenses
  - Created by IRS proposed regulations in 2019
- Who can offer an ICHRA?
  - No limit on employee headcount
  - Cannot offer “traditional” group health plan to the class(es) of employees eligible for ICHRA (may offer dental, vision, or health FSA coverage to ICHRA eligibles)
  - Any class not eligible for ICHRA can be offered traditional group health plan if there are more than 10 employees (minimum-class size requirements apply to the group offered the ICHRA)
- Who can participate in an ICHRA?
  - Employees and dependents who are enrolled in either individual ACA-compliant medical coverage purchased in the individual market or Medicare for each month
  - Enrollment must be substantiated no later than the first day of the plan year and on an ongoing basis by either third-party document or participant attestation
  - Eligibility and amount can vary by class – salary v hourly; full-time v part-time; etc.

ICHRAs (cont'd)

- Employers may not offer choice between ICHRA money and additional compensation
  - Employees may make pre-tax premiums contributions through Sec. 125 cafeteria plan for uncovered costs
  - Eligible employees must be able to opt out of participation on an annual basis
- No statutory limit on the benefit amount
  - Must be offered on the same terms within each class of employees
  - Amount may vary by up to 3x by age and may vary by family size (no. of dependents)
  - Can prorate the amount for late entries (e.g., midyear new hires)
- Subject to ERISA Title I requirements for plan document, reporting, and summary plan description
  - Written notice required at least 90 days prior to each plan year
- State insurance regulations must be checked
- COBRA may apply

PRO BONO™ PARTNERSHIP / ATLANTA

QSEHRAs v ICHRAs

	Eligible employers	Eligible employees	GHPS	2025 Limits	Employer contributions
QSEHRA	Fewer than 50 full-time equivalent employees	All W-2 full-time employees	Cannot offer GHP	$6,350 for single coverage and $12,800 for family coverage	Can vary by family status
ICHRA	Any Size	Employees with individual coverage	Can vary ICHRA or GHP by employment class	N/A	Can vary by employment class and family status

PRO BONO PARTNERSHIP / ATLANTA

Implementation & Administration

Best practices

PROBONO
PARTNERSHIP/ATLANTA

Implementation & Administration

- Practical Considerations
  - What is your current headcount and expected growth?
  - What is your administrative capacity? Do you have a dedicated HR person or team?
  - What additional costs would you need to consider (third-party administrators, brokers, etc.)?
- Documentation
  - Put it in writing and stick to it
    - Always include a reservation of rights
  - Know your compliance deadlines and keep a calendar that appoints responsibility
- When in doubt, seek legal advice

PRO BONO PARTNERSHIP / ATLANTA

Questions?

PRO BONO PARTNERSHIP/ATLANTA

Pro Bono Partnership of Atlanta

www.pbpatl.org

Upcoming Webcasts & Workshops Calendar

Event Listings

Nonprofit Notes Monthly Newsletter & Legal Alerts

Sign-Up

PRO BONO

PARTNERSHIP/ATLANTA