

Comparing HRAs, QSEHRAs, ICHRAs and EBHRAs

The chart below provides a summary of tax and related compliance issues applicable to HRAs, QSEHRAs, ICHRAs and EBHRAs.

Plan Design/Compliance Issue	HRAs	QSEHRAs	ICHRAs	EBHRAs
Internal Revenue Code	§105, §106	Code §9831(d)	Treas. Reg. §54.9802-4	Treas. Reg. §54.9831-1
Eligible Employer	Any employer, but must offer HRA with sponsor group health plan	An employer must not be an ALE and not sponsor group health plan	Any employer, but cannot offer group plan for those eligible for ICHRA	Any employer must sponsor group health plan but cannot offer ICHRA to those eligible
Eligible Employees	Group eligible must pass eligibility test under Code §105(h)	Any employee of the “eligible employer,” and allows certain employees to be excluded	A group of employees defined by the employer participating in individual coverage but cannot be eligible for group coverage or EBHRA. Deemed to pass nondiscrimination rules under Code §105(h) if meet rules	A group of all similarly situated individuals as defined by the employer, but cannot be offer ICHRA and group must pass nondiscrimination rules under Code §105(h)
When employees are eligible to participate	A waiting period cannot exceed 90 days	When employee is no longer considered an excluded employee	A waiting period cannot exceed 90 days	A waiting period can exceed 90 days
Salary Reduction Funding	Not permitted, but can be offered with Health FSA and POP	Not permitted	Not permitted, but can be offered with Health FSA and POP	Not permitted, but can be offered with Health FSA and POP
Eligible for HSA contributions	Yes, if reimburses only dental, vision and preventive care or post- deductible expenses	Likely yes, if reimburses only individual coverage premiums	Likely yes, if reimburses only individual coverage premiums and certain excepted benefits (e.g., dental or vision)	Yes, if reimburses only dental or vision expenses
Employees allowed to Opt-out	Yes	No	Yes	No
Permitted Amount of Contributions	Amount available is determined by employer	For 2020, self-only coverage is \$5,250 & \$10,600 for family coverage	Amount available is determined by employer	For 2020, \$1,800, amount will increase in 2021 and after
Carryover Of Unused Amounts	Permitted	Permitted	Permitted	Permitted
Medical Expenses Eligible For Reimbursement	Otherwise unreimbursed Code §§213(d) medical expenses incurred while coverage in effect, including premiums for group eligible health insurance and long-term care insurance	Reimburse individual major medical health insurance premiums, as well as other Code Section 213(d) expenses incurred during the QSEHRA coverage period, is permitted	Reimburse any Code Section 213(d) medical care expenses or to limit reimbursements to particular expenses (e.g., premiums), but not group health coverage	Reimburse any Code Section 213(d) medical expenses but not premiums for individual health coverage, Medicare, or non-COBRA group coverage (premiums for coverage consisting solely of excepted benefits can be reimbursed)
Cash-Outs Of Unused Amounts (If No Medical Expenses)	Not permitted	Not permitted	Not permitted	Not permitted
12-Month Period Of Coverage & Prohibition Of Mid-Year Changes	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Health FSA Uniform Coverage Requirement	Not Applicable — i.e., coverage level may be prorated by plan design	Not Applicable	Not Applicable	Not Applicable

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Expense Substantiation	Required	Required	Required	Required
Claims Adjudication	Required	Required	Required	Required
Tax Credit	HRA is considered with group health plan coverage to determine minimum value and affordability	Not applicable	Yes, under Code §4980H(a); possibly, under Code §4980H(b) (coverage must be affordable)	Not applicable
Code §105(h) Non-discrimination Requirement	Applies	Not applicable, if meets the eligibility rules	Applies, but the maximum reimbursement amount can vary between classes as provided under the ICHRA rules. ICHRA must not be nondiscriminatory in the operation of the plan. ICHRA that reimburse insurance premiums will be treated similarly to a fully-insured group insurance plan for nondiscrimination testing.	Applies
Funding Requirement	Not required—employers can decide to fund (i.e. set aside funds) as potential liability increases, but any such funding can invoke ERISA's trust requirement if amounts are segregated from general assets	Same	Same	Same
ERISA Requirements	Applies	Applies	Applies	Applies
COBRA	Applies –Employer has 20 or more employees	Does not apply	Applies –Employer has 20 or more employees	Applies –Employer has 20 or more employees
Disclosures and notices	SPD & SBC	SPD & Special Notice	SPD & Special Notice	SPD
HIPAA: Portability And Health Status Nondiscrimination	Applies—Health FSA exception generally not available	Applies—Health FSA exception generally not available	Applies—Health FSA exception generally not available	Does not apply
Privacy	Applies	Applies	Applies	Applies
Medicare Secondary Payer Rules	Applies	Does not apply	Applies	Applies