

Subchapter 19

Montana VEBA HRA

Rules 2.21.1901 through 2.21.1929 reserved

2.21.1930 SHORT TITLE (REPEALED) (History: 2-18-1305, MCA; IMP, 2-18-1302, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; REP, 2013 MAR p. 1083, Eff. 6/21/13.)

2.21.1931 OBJECTIVES (1) The Department of Administration administers a Voluntary Employees Beneficiary Association (VEBA) that allows Montana public employees to access health reimbursement accounts for themselves, their spouses, and other tax-qualified dependents to pay qualified health care expenses. The VEBA is funded by employer contributions and earnings from investment of the contributions. This program is called the Montana VEBA Health Reimbursement Account (Montana VEBA HRA), and is the plan established under Title 2, chapter 18, part 13, MCA.

(2) The objective of these rules is to establish uniform and cost-effective procedures for plan administration. (History: 2-18-1305, MCA; IMP, 2-18-1302, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; AMD, 2013 MAR p. 1083, Eff. 6/21/13; AMD, 2019 MAR p. 2011, Eff. 11/9/19.)

2.21.1932 DEFINITIONS In addition to the definitions found in 2-18-1303, MCA, the following definitions apply to this subchapter:

(1) "Dependent" means the tax-qualified dependent of the participant as determined under section 105(b) of the Internal Revenue Code, 26 USC 105(b). A tax-qualified dependent includes the participant's spouse recognized under the laws of the state in which the marriage was first established, and any child who has not, as of the end of the taxable year, attained age 27.

(2) "Eligible to retire" means eligible for benefits from the employer's given retirement system.

(3) "Employee" means a person employed in a pay status of at least 1040 hours each year. An employee is not an independent contractor or person hired by the employer under a personal services contract, a student intern, an employee employed in a seasonal position, or certain nonresident aliens.

(4) "Group" means a minimum of five employees employed by the same employer and formed pursuant to ARM 2.21.1937.

(5) "HRA" means a health reimbursement account to pay qualified health care expenses through employer contributions and investment earnings. The funds must be used for qualified health care expenses until funds are exhausted.

(6) "Member" means an employee whose work unit voted to establish a group.

(7) "Participant" means a member who separates from service, and for whom an account is established in the Montana VEBA HRA.

(8) "Qualified health care expenses" means expenses for a participant or the participant's dependent for medical care, as defined by section 213(d) of the Internal Revenue Code, 26 USC 213(d). Examples of qualified health care expenses are prescription drug costs, hospital and physician charges, and health insurance premiums.

(9) "Separation from service" or "Separate from service" means the employee retires or otherwise terminates employment and includes a voluntary or involuntary separation from service. The separation from service must be a separation from the employer. If the separation is a transfer within the same public entity, plan eligibility is based on the employee's position in the new group and the group criteria. If the separation is a transfer to another public entity without a Montana VEBA HRA group, the employee receives any remaining leave as provided by the employer's leave policy. (History: 2-18-1305, MCA; IMP, 2-18-1303, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; AMD, 2013 MAR p. 1083, Eff. 6/21/13; AMD, 2019 MAR p. 2011, Eff. 11/9/19.)

2.21.1933 MONTANA VEBA HRA ADMINISTRATION (1) The department shall:

- (a) provide educational presentations about the Montana VEBA HRA upon request;
- (b) review and approve requests to become a contracting employer;
- (c) evaluate, modify as necessary, and approve a contracting employer's proposal for group structure;
- (d) develop a plan for administration of the Montana VEBA HRA;
- (e) enforce group participation requirements in ARM 2.21.1937 and applicable nondiscrimination requirements in section 105(h) of the Internal Revenue Code, 26 USC 105(h) by not allowing discriminatory groups to form or to continue to exist;
- (f) establish a procedure to receive and deposit employer contributions consistent with this subchapter and applicable federal laws;
- (g) establish claims adjudication procedures consistent with applicable laws;
- (h) provide accounting and recordkeeping of all participant accounts;
- (i) ensure the Montana VEBA HRA operates to preserve its tax-exempt status and that no part of the net earnings or trust assets inure to the benefit of any one participant, other than by payment of qualified health care expenses and reasonable administrative expenses; and
- (j) determine investment vehicles available for participant account funds in the Montana VEBA HRA.

(2) Contracting employers shall:

- (a) allow educational presentations;
- (b) define groups and enroll eligible members;
- (c) determine the sources of employer contributions available to a group. Allowable sources may include sick leave cash-outs, annual vacation leave cash-outs to the extent permitted by state statute, and other sources not prohibited by state statute;
- (d) determine whether current employees are members of an existing group and notify employees of any change in status;
- (e) notify an employee hired into a plan-eligible position of the employee's change in status to a member;
- (f) notify the department when an employee becomes a member; and
- (g) notify existing members 30 days before the group's anniversary date to vote.

(3) An employer shall provide to the department, or the appropriate administering entity, the information necessary to operate the plan and establish the employer as a contracting employer. The department, in partnership with a contracting employer, shall provide to the employees the information to actively participate in a Montana VEBA HRA group.

(4) The department may delegate all or a portion of its administrative duties in this rule to an administrator.

(5) The department shall exercise its administrative duties in a uniform, nondiscriminatory manner, having all necessary power and discretion to accomplish those purposes. (History: 2-18-1305, MCA; IMP, 2-18-1309, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; AMD, 2013 MAR p. 1083, Eff. 6/21/13; AMD, 2019 MAR p. 2011, Eff. 11/9/19.)

2.21.1934 FEES (1) Contracting employers may not be charged a fee by the department to establish one or more groups.

(2) Participants may be required to pay monthly administration fees and shall pay a percentage of the monthly Montana VEBA HRA administration expenses as determined by the department. The fee begins when the contracting employer contribution is deposited into the participant account, and continues until the account has a zero balance. (History: 2-18-1305, MCA; IMP, 2-18-1304, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; AMD, 2013 MAR p. 1083, Eff. 6/21/13; AMD, 2019 MAR p. 2011, Eff. 11/9/19.)

Rules 2.21.1935 and 2.21.1936 reserved

2.21.1937 ELIGIBILITY (1) A group may be formed by:

(a) employees in an office, department, board, commission, attached agency, county, incorporated city or town, school district, unit of the university system, and the judicial and legislative branches of state government;

(b) employees in an organizational subdivision of an employer, such as a division, bureau, work unit, institution, etc.;

(c) employees in a bargaining unit; or

(d) other groups of employees defined by an employer that are not designed to provide individual decision-making regarding participation.

(2) A group may consist of employees who are:

(a) all currently eligible to retire;

(b) all currently ineligible to retire; or

(c) a mix of those eligible and ineligible to retire.

(3) No group may be formed with fewer than five employees.

(4) No group may be formed to benefit a select group of the highest paid employees. "Highest paid" means an annual compensation in the top 25% of employees ranked on the basis of total compensation paid during the year.

(5) Members in a group must be:

(a) eligible for sick leave;

(b) eligible for benefits with the employer;

(c) receiving an employer contribution for group benefits under 2-18-703, MCA, or other employer contribution to benefits; and

(d) active in the employer's retirement system.

(6) When a group is formed:

(a) members may not opt out of the group;

(b) current employees of the same employer not already in the group may not opt into the group;

(c) a participant may return to work but does not become a new member of a group unless hired into a job position eligible for the Montana VEBA HRA and meets all requirements in (5); and

(d) if an employee's circumstances change such that the employee becomes eligible to be a member of an existing group, the employee automatically becomes a member of this group. (History: 2-18-1305, MCA; IMP, 2-18-1310, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; AMD, 2013 MAR p. 1083, Eff. 6/21/13; AMD, 2019 MAR p. 2011, Eff. 11/9/19.)

2.21.1938 ELECTIONS (1) An employer may initiate or facilitate an election for employees to vote to form a new group in the Montana VEBA HRA. However, if at least 25% of employees request an election, an employer shall facilitate the election within 60 calendar days from the date of the request. Employers shall notify employees of a vote at least 15 days prior to the first day of the voting period.

(2) Employees shall determine the contribution sources before a vote is conducted. If the employees cannot decide on the contribution sources, the employer may conduct a straw poll to determine contribution sources. The employer shall allow all employees eligible to vote a reasonable amount of time to submit their choice for contribution sources. Once a majority agrees upon the contribution source, the contribution source must be listed on the ballot. If a majority cannot agree on contribution sources for an existing group, the existing group structure and contribution sources remain in place. If a majority cannot agree on proposed contribution sources for a new group, the group does not form.

(3) Employees who are members of a collective bargaining unit may decide to either participate with other employees in the formation of a group or to initiate the election through the bargaining unit. If the employees of a collective bargaining unit decide to participate with noncollectively bargained employees, the employer shall obtain written agreement from the union representing the bargaining unit employees.

(4) Employers shall make a reasonable effort to maintain the privacy of each individual ballot. Employers shall permit absentee voting for employees not present during an election.

(5) If the majority of employees vote to establish a group or change an existing group, then all employees eligible to vote, any employees who later become eligible, and any eligible employees subsequently hired into positions eligible for the Montana VEBA HRA become members of the group. If the majority of the employees vote to become members, employees who voted not to establish a group or change an existing group, and any eligible employees who did not return a ballot, become members of the group and may not opt out.

(6) If at least 25% of the members of the group request an annual election, members of a group may hold a vote to:

- (a) continue as an active group with the same contribution sources;
- (b) continue as an active group with different contribution sources; or
- (c) disband the group.

(7) If members vote to disband the group, employees are not required to wait 12 months to form another group.

(8) If members vote to continue as an active group with the same or different contribution sources, an employer may not conduct another election for that group until 12 months from the date of the election.

(9) The effective date of the vote is the first day of the pay period/cycle immediately following the closing day of the voting period. The voting period for an existing group must conclude no later than the day before the anniversary date of the group. The employer shall announce the results of the vote to the employees or members of the group, as applicable, at the completion of the vote.

(10) If no group members or less than 25% of group members request an annual election by the end of the 30-day notice period immediately prior to the anniversary date of the group, the group's existing structure and contribution sources continue without modification for 12 months. (History: 2-18-1305, MCA; IMP, 2-18-1310, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; AMD, 2013 MAR p. 1083, Eff. 6/21/13; AMD, 2019 MAR p. 2011, Eff. 11/9/19.)

2.21.1939 PARTICIPATION (1) A member is a participant of the Montana VEBA HRA at the time the member separates from service, submits a signed and completed enrollment form to the department or administrator, as applicable, and the contracting employer makes a contribution to the participant's account.

(2) If a member dies as an active employee, all accrued leave benefits must be paid as taxable income. The member is not a participant.

(3) Each participant may direct the investment of funds in the participant's account among the investment vehicles offered. The department shall identify a default investment vehicle for a participant who fails to select an investment vehicle.

(4) Participants may make investment changes on a monthly basis.

(5) A participant account closes when the balance of the account is zero. (History: 2-18-1305, MCA; IMP, 2-18-1304, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; AMD, 2013 MAR p. 1083, Eff. 6/21/13; AMD, 2019 MAR p. 2011, Eff. 11/9/19.)

2.21.1940 CONTRIBUTIONS (1) Employer contributions into an account, the accumulation of interest or other earnings in an account, and payments from an account for qualified health care expenses are tax-exempt, as provided in 15-30-2110, MCA, and under applicable federal laws to the extent that the plan meets requirements under applicable sections of the Internal Revenue Code.

(2) Each contracting employer shall make contributions to the Montana VEBA HRA for participants. The department or its administrator, as applicable, shall establish an account for each participant.

(3) Sick leave is a contribution source, if approved by a vote of the group, and may convert tax-free as a contribution. The sick leave contribution rate is 25% of the member's balance at time of separation from service. As agreed upon by the group, the sick leave balance of 25% may be divided as defined by the department between a Montana VEBA HRA contribution and taxable cash.

(4) Annual vacation leave is a contribution source, if approved by a vote of the group, and may convert tax-free as a contribution. The annual vacation leave rate is 100% of the member's balance at the time of separation from service.

(5) Other contributions may be allowed as permitted by statute and federal law, but may not be discriminatory in favoring highly compensated employees. All members of a group must participate in any form of approved contributions. (History: 2-18-1305, MCA; IMP, 2-18-1311, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; AMD, 2013 MAR p. 1083, Eff. 6/21/13; AMD, 2019 MAR p. 2011, Eff. 11/9/19.)

2.21.1941 BENEFITS IN THE EVENT OF DEATH (1) If a deceased participant's account has a positive account balance, the participant's surviving spouse, if any, may file claims for qualified health care expenses incurred by the participant up until death, the surviving spouse, and other tax-qualified dependents.

(2) If a deceased participant's account has a positive account balance and the participant dies without a surviving spouse but with other tax-qualified dependents, the dependents (or guardian) may file claims for qualified health care expenses of those dependents.

(3) If the participant dies with no surviving spouse or other tax-qualified dependents, or if the last surviving tax-qualified dependent of the deceased participant dies, or when all surviving dependents of the deceased participant lose tax-qualified status, then the executor or administrator of the deceased participant's estate may file claims for qualified health care expenses incurred by the deceased participant or tax-qualified dependent up to date of death or loss of tax-qualified status. If there are no qualified health care expenses to reimburse, the remaining account balance must be allocated on a per capita basis to all participant accounts (e.g., remaining account balance of \$2,500 for 1,000 participants equals \$2.50 per participant on a per capita basis).

(4) If any participant account is unclaimed for at least 35 months since the whereabouts of the person entitled to the account were last known to the administrator, the participant's account becomes the property of the Montana VEBA HRA. Unclaimed account funds must be allocated on a per capita basis to all participant accounts (e.g., remaining account balance of \$2,500 for 1,000 participants equals \$2.50 per participant on a per capita basis). (History: 2-18-1305, MCA; IMP, 2-18-1313, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; AMD, 2013 MAR p. 1083, Eff. 6/21/13; AMD, 2019 MAR p. 2011, Eff. 11/9/19.)

Subchapters 20 through 29 reserved