

## 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2.21.1930 SHORT TITLE (REPEALED) (History: 2-18-1305, MCA; IMP, 2-18-1302, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; REP, 2013 MAR p. 1083, Eff. 6/21/13.)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 state of Montana administers a Voluntary Employees Beneficiary Association (VEBA) that allows Montana public employees to access health reimbursement accounts for themselves, their spouses, and their qualified dependents funded by employer contributions and earnings from investment of the contributions. This program is called the Montana VEBA Health Reimbursement Account (HRA).

(2) The Department of Administration shall approve groups across the state, provide access to the Montana VEBA HRA by eligible contracting employers, and determine the investment vehicles available to members.

(3) The objective of these rules is to establish consistent and cost-effective procedures for establishing and maintaining groups and account contributions. (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.)

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

(1) "Contracting employer" means an employer who, as provided in 2-18-1310, MCA, has contracted with the department to participate in the plan.

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

(3) "Employee" means a person employed by an employer who is in a pay status at least 1040 hours each year, but does not include an independent contractor or person hired by the employer under a personal services contract.

(4) "Group" means a minimum of five employees employed by the same agency and identified as having common characteristics for the purposes of conducting a VEBA election vote.

(5) "HRA" means health reimbursement account. This is a tax-exempt account established for the payment of qualified health care expenses through employer contributions and investment earnings. The funds may be accessed only for the payment of qualified health care expenses, defined to include medical plan premiums, until the funds have been exhausted.

(6) "Separation from service" or "Separate from service" means the employee retires or otherwise has a termination of employment. The separation from service must be a separation from the employer. If the separation is a transfer to another agency or public entity, VEBA eligibility is based on the new group and its VEBA criteria. If the separation is a transfer to another agency or public entity without a VEBA plan, the employee would receive any remaining leave as provided by the employer's leave policy.

(7) "VEBA participant" means a former employee for whom employer deposits have been received by the Montana VEBA HRA and whose account has a positive balance. (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.)

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

- (a) provide educational presentations about the Montana VEBA HRA upon request;
  - (b) review employer proposals for participation in the Montana VEBA HRA and determine whether the proposed group meets the definition of a group and whether the employer may become a contracting employer;
  - (c) develop a plan for administration of the Montana VEBA HRA;
  - (d) enforce the participation requirements by not allowing discriminatory groups to form or by refusing to administer funds from groups that do not continue to comply with the department's requirements; and
  - (e) determine and process contributions as provided by the department in accordance with IRS tax law restrictions.
- (2) Contracting employers must:
- (a) allow educational presentations;
  - (b) define groups and enroll eligible members as provided in these rules;
  - (c) determine the types of employer contributions to the HRA available to a group. Allowable employer contributions may include sick leave cash-outs, periodic employer contributions, group salary contributions, percent of raise contributions, unused employee benefit funds, annual vacation leave cash-outs as permitted by state statute, group merit pay, and longevity payments or other contributions not prohibited by state statute;
  - (d) determine whether current employees can become members or whether an employee must terminate employment to become a member; and
  - (e) notify the Montana VEBA HRA when an employee becomes a member.
- (3) The department shall ensure that no part of the net earnings of the Montana HRA inures to the benefit of any private individual or shareholder, other than by payment of the allowable health care reimbursement expenses.
- (4) A group shall operate in a manner prescribed by the department unless the association is disbanded in a manner prescribed by the department.
- (5) A contracting employer shall provide to the department, or the appropriate administering entity, the information necessary for the plan's operation. The department, in partnership with a contracting employer, shall provide to plan members the information necessary to actively participate in the plan.
- (6) The department may delegate all or a portion of its administrative duties to an administrator.
- (7) The administrator shall exercise all of its discretion in a uniform, nondiscriminatory manner and shall have all necessary power and discretion to accomplish those purposes. (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.)

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

(2) VEBA participants may be required to pay monthly administration fees, and shall pay a percentage of the monthly HRA administration expenses as determined by the department. The fee begins when their accounts are established and continues until the account has a zero balance. (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.)

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-to agency, county, incorporated city or town, school district, unit of the university system, 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 discriminate in favor of highly compensated employees and be formed only for the benefit of a select group of the highest paid employees, which means compensation in excess of \$80,000 and in the top 20% of employees ranked on the basis of compensation paid during the year.
- (5) Employees who may be excluded from participation without violating the nondiscrimination provisions described in (4) include:
- (a) employees who are not:
    - (i) eligible for sick leave;
    - (ii) eligible for benefits with the employer;
    - (iii) receiving an employer contribution for group benefits under 2-18-703, MCA, or other employer contribution to benefits; and
    - (iv) active in the employer's retirement system (retirement-eligible-only groups);
  - (b) seasonal and less-than-half-time employees;
  - (c) employees covered by a collective bargaining agreement; and
  - (d) certain nonresident aliens.
- (6) When a group has been formed:
- (a) members and VEBA participants may not opt out of the group;
  - (b) current employees or retirees of the same employer not already in the group may not opt into the group; and
  - (c) 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, 2-18-1302, MCA; NEW, 2005 MAR p. 911, Eff. 4/29/05; AMD, 2013 MAR p. 1083, Eff. 6/21/13.)

2.21.1938 ELECTIONS (1) For the purposes of election and administration of the Montana VEBA HRA, an employer may form subunits.

(2) An employer may either initiate or facilitate an election to determine whether employees will form a group to participate in the Montana VEBA HRA. When at least 25% of the employees request an election, an employer must facilitate the election within 60 calendar days from the date of the request. Employers shall notify employees of an impending vote at least 15 days prior to the date the vote commences.

(3) The election may include all the employer's employees or a specified group of employees to determine whether those employees will form a group.

(4) The contribution source(s) must be agreed upon before a vote is conducted. The group may be polled in a manner acceptable to the group. Once a majority agrees upon the contribution source(s), the contribution source(s) must be listed on the ballot.

(5) 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 decide to participate with other employees, a written memorandum of understanding from the union representing the bargaining unit employees must be obtained by the employer.

(6) Employers must make a reasonable effort when conducting an election to maintain the privacy of each individual ballot. Employers also must include provisions for absentee voting for those employees not present during an election.

(7) If a majority of the employees vote to become members, then all employees eligible to vote, and any employees subsequently hired into the positions covered under the terms and conditions of the election, must be formed as a group and the employees must become members. If the majority of the employees vote to become members, employees who voted not to participate in the group are still included in the group and may not opt out of the group.

(8) Members of a group may hold an annual election to determine whether or not they will continue their participation in the Montana VEBA HRA if at least 25% of the members of the group requests an election.

(a) If a majority of members elect to discontinue their participation, their group is disbanded until another election is conducted; however, the members are not required to wait 12 months from the date of the election to form another group.

(b) Once a group disbands, an employer shall not make further contributions to VEBA participants' accounts. However, distributions from existing VEBA participants' accounts will continue until the funds in the accounts are exhausted.

(c) Once an election is conducted, and a positive vote is cast by a majority, an employer may not conduct another election for that group for 12 months from the date of the election.

(9) The effective date of the group must be no later than 30 days following completion of the vote and announcement of the election outcome which creates the 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.)

2.21.1939 PARTICIPATION (1) Subject to the limitations of this rule and the eligibility provisions of employer policies and applicable collective bargaining unit agreements, an employee becomes a member of the Montana VEBA HRA at the time of proper completion of an enrollment form and the first employer deposit to the member's account.

(2) Each member is entitled to direct the investment of funds in the member's account among the investment vehicles offered. The department shall provide for a default investment vehicle if a member fails to direct how funds are to be invested.

(3) Members may make investment changes on a monthly basis. (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.)

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 and regulations to the extent that the plan is qualified under applicable sections of the Internal Revenue Code.

(2) Each employer shall make deposits to the VEBA health benefit plan on behalf of its eligible members pursuant to the terms of collective bargaining agreements or employer policies. Employer deposits shall be specifically allocated to each participating member's account.

(3) Each participating employer shall provide for a member to annually designate how many hours (if any) of the member's annual vacation leave balance in excess of 240 hours and/or sick leave will be automatically converted to an employer contribution to the member's account each pay period, as provided in 2-18-1311, MCA. The state's VEBA plan does not allow contributions of leave prior to separation from service.

(4) Sick leave is considered a contribution source, as approved by the voting entity, and may be converted tax-free for the purposes of a contribution. The rate of sick leave is 25% of the employee's balance at the time of separation. As agreed upon by the voting entity, the sick leave balance of 25% may be divided as listed by the department between VEBA HRA contribution and taxable cash.

(5) Each participating employer may establish a maximum amount of sick leave hours that may be automatically converted to an annual contribution. An employer may establish the maximum annual hours at "0" until an employee separates from service.

(6) Annual vacation leave is considered a contribution source, as approved by the voting entity, and may be converted tax-free for the purposes of a contribution. The rate of annual vacation leave is 100% of the employee's balance at the time of separation from service.

(7) Other contributions shall be allowed as outlined in statute, but may not be discriminatory in favoring highly compensated employees. The group must all 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.)

2.21.1941 BENEFITS IN THE EVENT OF DEATH (1) A member may designate a spouse and/or qualified dependent(s) in a manner prescribed by the department.

(2) Upon a VEBA participant's death, if the deceased VEBA participant's account has a positive account balance, the VEBA participant's surviving spouse and/or qualified dependent(s) are eligible to use the account for qualified health care expenses.

(3) If a deceased VEBA participant's account has a positive account balance, the VEBA participant's surviving spouse, if any, may file claims for eligible medical benefits incurred by the VEBA participant, the surviving spouse, and any other qualified dependents.

(4) If a deceased VEBA participant's account has a positive account balance and dies without a surviving spouse but with qualified dependent(s), the guardian(s) of the dependent(s) may file claims for eligible medical benefits on the dependent(s)' behalf.

(5) At the death of the VEBA participant who has no surviving spouse or qualified dependents, or when the last to die of the VEBA participant and their qualified dependents eligible for medical benefits under the plan dies or is no longer described in IRC 152(a), then the executor or administrator of that person's estate may file claims for any eligible expenses incurred by that person, after which the remaining account balance shall be reallocated on a per capita basis to all Montana VEBA HRA member accounts.

(6) If any VEBA participant's account has been unclaimed for a period of at least 35 months since the whereabouts or continued existence of the person entitled to the account was last known to the administrator, the VEBA participant's account shall become the property of the Montana VEBA HRA. (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.)

Subchapters 20 through 29 reserved