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2.21.1930 SHORT TITLE

(1) This policy may be cited as the Montana VEBA HRA policy.

History: [2-18-1305](#), MCA; [IMP](#), [2-18-1302](#), MCA; [NEW](#), 2005 MAR p. 911, Eff. 4/29/05.

2.21.1931 POLICY AND OBJECTIVES

(1) It is the policy of the state of Montana to administer a voluntary employees' beneficiary association (VEBA) that allows Montana public employees to access health reimbursement accounts for themselves, their qualified dependents, and their beneficiaries, funded by employer contributions and earnings from investment of the contributions. This program shall be called the Montana VEBA HRA.

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

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

History: [2-18-1305](#), MCA; [IMP](#), [2-18-1302](#), MCA; [NEW](#), 2005 MAR p. 911, Eff. 4/29/05.

2.21.1932 DEFINITIONS

(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) "Department" means the department of administration established in [2-15-1001](#) , MCA.

(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) "Employer" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other administrative unit of state government and political subdivision of the state, including a county, an incorporated city or town, or school district.

(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. At any time after a member's account has been established, the member may access funds in the account in a manner prescribed by the department. The funds may be accessed only for the payment of qualified health care expenses, which are defined to include medical plan premiums, and until the funds have been exhausted.

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(6) "Member" means a current or former employee for whom employer deposits have been received by Montana VEBA HRA and whose account has a positive balance.

(7) "VEBA group" means a collection of employees who are employed by the same employer who elect to form a voluntary employees' beneficiary association. A group may not be considered if the group would not meet requirements for nondiscrimination.

(8) "VEBA participant" means an employee who belongs to a VEBA group enrolled in the Montana VEBA HRA, established under [2-18-1310](#), MCA.

History: [2-18-1305](#), MCA; [IMP](#), [2-18-1302](#), MCA; [NEW](#), 2005 MAR p. 911, Eff. 4/29/05.

2.21.1933 MONTANA VEBA HRA ADMINISTRATION

(1) The department shall provide educational presentations about the Montana VEBA HRA upon request.

(2) The department shall review employer proposals for participation in the Montana VEBA HRA and determine whether the employer may become a contracting employer.

(3) Contracting employers must:

(a) define groups and enroll eligible members as provided in these rules;

(b) determine the types of employer contributions to the HRA available to a VEBA group. Allowable employer contributions 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 (through collective bargaining only) or other contributions not prohibited by state statute;

(c) determine whether current employees can become members or whether an employee must terminate employment to become a member;

(d) notify the Montana VEBA HRA when a VEBA participant becomes a member; and

(e) determine and process contributions as provided by the department in accordance with IRS tax law restrictions.

(4) The department shall enforce the participation requirements by not allowing illegal or discriminatory VEBA groups to form or by refusing to administer funds from VEBA groups that do not continue to comply with the department's requirements.

(5) 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.

(6) A member group shall operate in a manner prescribed by the department unless the association is disbanded in a manner prescribed by the department.

(7) A contracting employer shall provide to the department, or the appropriate administering entity, the information necessary for the plan's operation. The department,

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in partnership with a contracting employer, shall provide to plan members the information necessary to actively participate in the plan.

(8) The department may delegate all or a portion of its administrative duties to an administrator.

(9) 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.

2.21.1934 FEES

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

(2) Members shall pay a monthly administration fee, plus a percentage of the monthly HRA administration expenses as determined by the department. The fee will start when their accounts are established and continue 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.

2.21.1937 ELIGIBILITY

(1) A VEBA group may be formed voluntarily 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) No VEBA group may be formed that is fewer than two employees.

(3) No VEBA group may be formed that is 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.

(4) Employees who may be excluded from participation without violating the nondiscrimination provisions include:

(a) employees with less than three years of service;

(b) seasonal and less than half-time employees;

(c) employees covered by a collective bargaining agreement; and

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(d) certain nonresident aliens.

History: [2-18-1305](#), MCA; [IMP](#), [2-18-1302](#), MCA; [NEW](#), 2005 MAR p. 911, Eff. 4/29/05.

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 member group for the purpose of participating 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.

(3) The election may include all the employer's employees or a specified group of employees to determine whether those employees will form a member group for the purpose of participating in the Montana VEBA HRA.

(4) Employees who are members of a collective bargaining unit may decide to either participate with other employees in the formation of a VEBA 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.

(5) 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.

(6) If a majority of the employees voting on the question vote to become VEBA participants, then all of the employees that were eligible to vote on the question and any employees subsequently hired into the positions covered under the terms and conditions of the election must be formed as a VEBA group and the employees must become VEBA participants.

(7) Members of a VEBA 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 VEBA group request an election.

(a) If a majority of eligible members elect to discontinue their participation, their VEBA group is disbanded until another election is conducted.

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

(c) Once an election is conducted, an employer is not required to conduct another election for that VEBA group for 12 months from the date of the election.

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

History: [2-18-1305](#), MCA; [IMP](#), [2-18-1302](#), MCA; [NEW](#), 2005 MAR p. 911, Eff. 4/29/05.

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) At any time after a member's account has been established, the member may access funds in the account in a manner prescribed by the department. The funds may be accessed only for the payment of qualified health care expenses and until the funds have been exhausted.

History: [2-18-1305](#), MCA; [IMP](#), [2-18-1302](#), MCA; [NEW](#), 2005 MAR p. 911, Eff. 4/29/05.

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 [15-30-111](#), 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 sick leave balance in excess of 240 hours will be automatically converted to an employer contribution to the member's account each pay period, as provided in [2-18-1311](#), et seq., MCA.

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

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(5) Other contributions shall be allowed as outlined in statute, but may not be discriminatory in favoring highly compensated employees. The VEBA group must all participate in any form of approved contributions.

History: [2-18-1305](#), MCA; [IMP](#), [2-18-1302](#), MCA; [NEW](#), 2005 MAR p. 911, Eff. 4/29/05.

2.21.1941 BENEFITS IN THE EVENT OF DEATH

(1) A member must designate an individual as a beneficiary in a manner prescribed by the department.

(2) Upon proof of a member's death, if the deceased member's account has a positive account balance, the member's designated beneficiary is entitled to use the account for qualified health care expenses.

(3) If a deceased member's account has a positive account balance and the member failed to designate a beneficiary or has no surviving designated beneficiary, the account balance will be available to pay qualified health care benefits incurred by the person(s) certified to be the beneficiary by the executor or administrator of the member's estate.

(4) In the event any member's account shall have 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 member's account shall become the property of the Montana VEBA HRA.

History: [2-18-1305](#), MCA; [IMP](#), [2-18-1302](#), MCA; [NEW](#), 2005 MAR p. 911, Eff. 4/29/05.