# Health Insurance Options for Land Trusts Big and Small

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*DISCLAIMER: This document shall not be considered legal or tax advice. This document is intended only to provide small nonprofits with a basic understanding of the health insurance options available, and the process by which these options are acquired. It shall not be construed as a substitute for consultation with an attorney and/or tax professional. All monetary values are for hypothetical purposes only and do not represent actual market values.*

For a small nonprofit, like all small businesses, funds are tight, and one of the expenses it's easy to skimp on is employee compensation. I strongly advise you not to. Providing competitive compensation for your employees increases morale and retention, and there are ways it can be accomplished with minimal cost – indeed, some of the options in this document will actually save you money!

More important than the practical implications though, is this question: why wouldn't you pay your employees a fair wage? Excuses are common – most frequently in our sector, employers hide behind fundraising limitations, the importance of the mission, and the need to maintain a low overhead ratio – but the reality is that your employees are your most important tools to accomplish your mission. You should invest in them, and be willing to explain why you have done so.

It is also an issue of equity and justice, and it cuts two ways. The first and most obvious way is that poor compensation selects for affluent applicants who can afford to be poor, and those people are almost exclusively white. The second is that you are adding stress to your employees lives, and the resulting cognitive strain makes them more susceptible to biases and mental shortcuts that perpetuate racist systems.[1] Given the environmental movement's long history of racism,[2] this constitutes a serious justice issue for your organization.

You probably aren't able to become a top-tier employer with the flip of a switch, but you can begin working to move that direction gradually, and one of the simplest, most high-value ways to improve your compensation package is by improving your employees' health insurance options.

What you might not know is that there are great options out there for even the smallest of nonprofits! This document will walk you through some of those and provide you with a way to determine which option is the best fit for your organization.

## I. Selecting a Health Insurance Arrangement

There are essentially two things you need to know to determine the best health insurance arrangement option for your organization: how many full-time employees you have, and what kind of plan you want to make available to your employees.

The first question should be easy – if you don't know how many full-time employees you have, that's a problem beyond the scope of this document. The

[1] See Chapter 3 of *Thinking Fast and Slow*, by Daniel Kahneman.
[2] See, for example: https://www.sierraclub.org/michael-brune/2020/07/john-muir-early-history-sierra-club

implication of that number is where the rubber meets the road, though, because it determines what kind of plans are available.

If you only have one full-time employee, you will not be able to purchase a group plan, either through the SHOP Marketplace or directly from an employer. If that is the case, skip Section II Of this document and head straight for Section III on page 16, as it's the only option that will work for your organization at this time.

If you have two or more full-time employees, you have the option of offering a group insurance plan with a Section 125 Premium Only Cafeteria Plan, or setting up a Qualified Small Employer Health Reimbursement Arrangement to reimburse your employees for individual plans purchased through the marketplace. There are pros and cons to each approach; the QSEHRA is simpler to set up, but requires direct financial investment from the organization, while a group insurance plan with a Section 125 Premium Only Cafeteria Plan is slightly more complex to configure, but can be done with no financial investment by the organization – indeed, in its lowest-investment form, a Section 125 plan can give your employees a raise and reduce your organization's payroll tax obligations without any other expenditures!

Let's walk through the specifics of each option.

## II. Section 125 Premium Only Cafeteria Plans

A Section 125 Premium Only Cafeteria Plan[3] is a tool that allows your employees to pay all or a portion of their health insurance premiums through payroll deductions, pre-tax. If you are providing reimbursement for your employee, Missouri Revised Statutes Section 376.453.1 requires the creation of a Premium-Only Cafeteria Plan. Many other states have passed laws doing the same, but not all – check your local laws to ensure compliance.

**NOTE**: A Section 125 Premium Only Plan cannot be used to pay for health insurance plans purchased through the individual marketplace on Healthcare.gov! You must have a group insurance plan, purchased either through the SHOP Marketplace or directly from an insurance company, to utilize this option. However you purchase insurance, you will need at least two full time employees on payroll to purchase a group insurance plan.

Adopting a cafeteria plan benefits both the employer and the employee by reducing the amount of taxable compensation. The employer's payroll tax obligations will be lessened, and the employer's income tax obligations will be

[3] So called because it is established under 26 U.S.C. Section 125.

reduced as well. Here's an example calculation of the savings (all numbers are hypothetical and provided only for informational purposes):

| | Without Cafeteria Plan | With Cafeteria Plan |
|---|---|---|
| Gross Pay | $3,750.00 | $3,750.00 |
| Cafeteria Plan Deduction | | $300.00 |
| Social Security Taxable Wages | $3,750.00 | $3,450.00 |
| Payroll Tax (Paid by Organization) | $286.88 | $263.93 |
| Income Tax (Paid by Employee) | $937.50 | $862.50 |
| | **Monthly Savings (Organization)** | **$22.95** |
| | **Monthly Savings (Employee)** | **$75.00** |

When you additionally consider that implementing such a plan requires only a very small amount of effort, it's a no-brainer! Even if you're not offering insurance coverage (through the SHOP Marketplace as described above, or through a group health insurance plan), if your employees are buying their own insurance, your organization can offer a Section 125 Premium-Only Cafeteria Plan to allow them to pay their premiums pre-tax. **By implementing a cafeteria plan, you can give your employees a raise without actually increasing their gross pay.**

The process is fairly simple: first, your board must adopt a Section 125 Premium-Only Cafeteria Plan to be offered to your employees. An example resolution to be signed after adoption is attached to this document (Attachment 1). Once you have adopted the plan, you should provide a Salary Reduction Agreement for your employees to opt into the plan. An example of such a form is included with this document as well (Attachment 2). Once your employees have opted into the plan, simply deduct the agreed-upon amount from payroll each month, pre-tax!

> **NOTE**: While the Salary Reduction Agreement states that it is in effect until replaced, best practices suggest that annually prior to the beginning of your plan year, a new form should be obtained. You can make this a part of an annual document update and get a new W-4 from employees as part of the process.

It works just like a retirement plan – the pay stub should list gross pay, subtract the amount to be transferred into the cafeteria plan (as well as any other pre-tax deductions), and use the resulting amount to calculate payroll and income taxes. The amount deducted from those paychecks should then be transferred into the cafeteria plan account. This can be an actual bank account, or, if the premiums are being paid by the organization, can simply be a line item in your financial statements. If the adopted plan is a Premium-Only Plan, the withheld funds may only be used for the payment of health insurance premiums! Penalties must be paid to withdraw those funds for other purposes.

Establishing a Premium Only Plan also requires the establishment of a plan year; if you are offering coverage to your employees, the cafeteria plan's plan year should correspond to your insurance coverage's plan year. If you are not offering coverage, it should correspond to your organization's fiscal year.

The organization can pay all of the insurance premiums, or none of them, for their employees' dependents, or not, or anything in between, as long as the employee's portion of the premiums is paid through the use of the Premium Only Plan so that the employee is not required to pay income taxes on their insurance premiums.

## Attachment 1

### Example Section 125 Premium-Only Cafeteria Plan Adoption Resolution

<ORGANIZATION> hereby adopts a premium-only cafeteria plan, as permitted under 26 U.S.C. Section 125, in order to allow employees to withhold any contributions to health insurance premiums, for employee and/or dependent coverage, from their salary on a pre-tax basis.

This plan shall be effective as of <BEGINNING PLAN YEAR DATE>, and the first plan year shall begin on that date and end on <ENDING PLAN YEAR DATE>. Subsequent plan years will be based on that same twelve-month period.

The premium-only cafeteria plan shall be governed under the laws of the State of <STATE>.

The Board of Directors of <ORGANIZATION> adopts this resolution on <DATE>.

________________________________________
<PRESIDENT’S NAME>, President

## Attachment 2
## Example Salary Reduction Agreement Form

Participant Name ___________________________________________
Address ______________________________ Birth Date ___________
City/State/Zip _________________________ Hire Date ____________

Each eligible employee may make, change, or modify his/her salary reduction during the first 30 days of the plan year, or in the first 30 days in which the employee becomes eligible. The employer may allow other election periods at their discretion.

The maximum salary reduction allowed under this plan shall be no greater than the amount the employee pays toward their health insurance premiums during the plan year.

☐ I elect to STOP making salary reduction contributions into the Section 125 Premium-Only Cafeteria Plan.

☐ I DO NOT WISH to make salary reduction contributions into the Section 125 Premium-Only Cafeteria Plan.

☐ I elect to MAKE salary reduction contributions into the Section 125 Premium-Only Cafeteria Plan subject to the terms and conditions of the Plan. I authorize my employer to deduct from my pay the amount and/or percentage indicated below.

Salary Deferral: ____% of pay OR $________ (actual dollar amount)

**I understand** that my salary reduction contributions will start as soon as permitted and is administratively feasible. Date of first payroll period to begin salary reduction contributions is ________________.

This Salary Reduction Agreement replaces any earlier agreement and will remain in effect as long as I remain an employee eligible for the Section 125 Premium-Only Cafeteria Plan, or until I provide my employer with a request to end my salary reduction contributions or provide a new Salary Reduction Agreement as permitted under the Section 125 Premium-Only Cafeteria Plan.

Employee's Signature ____________________________ Date: _________

## III. QSEHRAs and the Individual Marketplace

If you cannot or are not providing access to a group plan for health insurance, you can still provide your employees with compensation for their health insurance premiums pre-tax through the use of a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA), under 26 U.S.C. 9831(d).

To utilize a QSEHRA, an organization must meet the following requirements:[4]

- Is not an Applicable Large Employer that employs at least 50 employees[5]
- Does not offer a group health plan[6] to any of its employees
- Does not offer the QSEHRA in conjunction with a required salary reduction
- Has documented proof of coverage and/or expenses from each employee, and their covered family members receiving coverage under the arrangement
- Does not make payments or reimbursements exceeding $4,950 for a single individual or $10,000 for an arrangement that provides for the expenses of eligible family members
- Provides the arrangement on generally the same terms to all employees

**NOTE**: A QSEHRA does not allow for the payment of health insurance premiums through payroll deductions! To utilize this option, the organization must pay the employee's premiums.

The process of creating a QSEHRA is quite simple; the organization should adopt the arrangement using a resolution like the example included in this document (Attachment 3), and employee should sign up for plan through the Healthcare.gov Individual Marketplace. Once the employee has signed up for a plan, they should provide the organization with documentation of their premium. At that point, the premium reimbursement can be added to the employee's monthly pay stub as a non-taxed reimbursement.

[4] See I.R.S. Notice 2017-67, available at https://www.irs.gov/pub/irs-drop/n-17-67.pdf
[5] As defined by 26 U.S.C. 4980H(c)2
[6] As defined by 26 U.S.C. 5000(b)

## Attachment 3

### Example Qualified Small Employer Health Reimbursement Account Adoption Resolution

<ORGANIZATION> hereby adopts a Qualified Small Employer Health Reimbursement Account, as permitted under 26 U.S.C. 9831(d), to reimburse employees for health insurance premiums for employee and/or spouse coverage, in addition to their salary, on a pre-tax basis.

This account shall be subject to the requirements of 26 U.S.C. 9831(d) and all other relevant laws, and employees shall provide documentation of coverage prior to reimbursement.

The account shall be governed under the laws of the State of <STATE>.

The Board of Directors of <ORGANIZATION> adopts this resolution on <DATE>.

________________________________________

<PRESIDENT'S NAME>, President