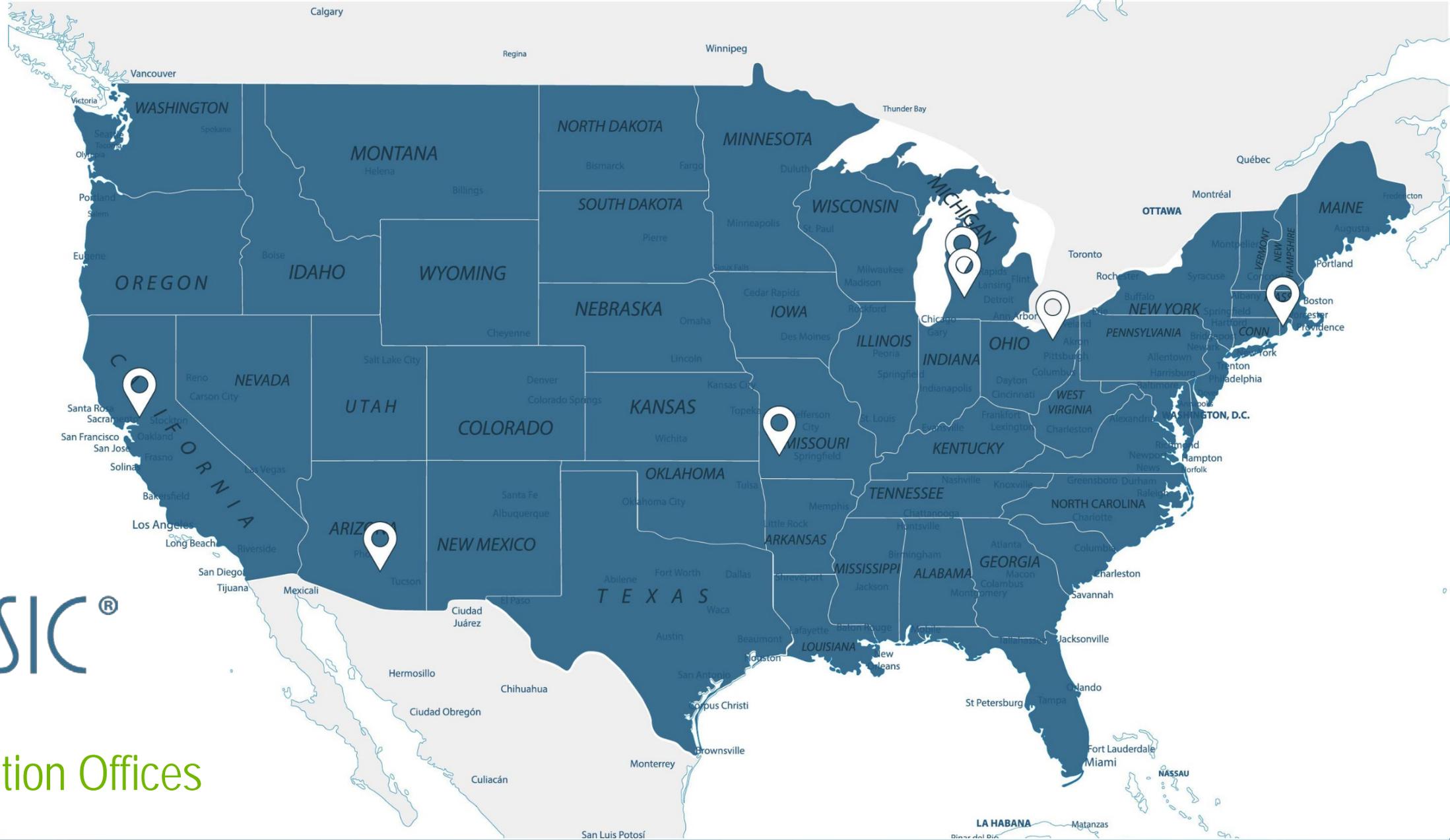




Final Rules on HRAs and Individual Market Coverage



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➤ Presenter



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➤ HRA History

- Health Reimbursement Arrangements
 - Pre-2013 World
 - 2013 and Beyond
 - Proposed Rules
 - Final Rules

➤ HRA History

- Last outstanding item from the 10/17 Executive Order
 - AHPs
 - STLDI
 - HRAs

➤ Overview of Final Regulations

- Two new types of HRAs:
 - Integrated with individual market insurance or Medicare (“ICHRA”)
 - Excepted benefit (“EBHRA”)
- Guidance regarding interaction with:
 - ACA PTCs
 - Employer mandate
 - SEPs
- Clarification on ERISA application & safe harbor

ICHRAs

➤ New Integration Rules

- The ICHRA must meet 5 requirements:
 1. Enrollment
 2. Class
 3. Opt-Out
 4. Substantiation
 5. Notice

➤ New Integration Rules

- **UNIVERSAL PROHIBITION** – CANNOT offer any individual a choice between an ICHRA or employer-sponsored group health plan coverage!

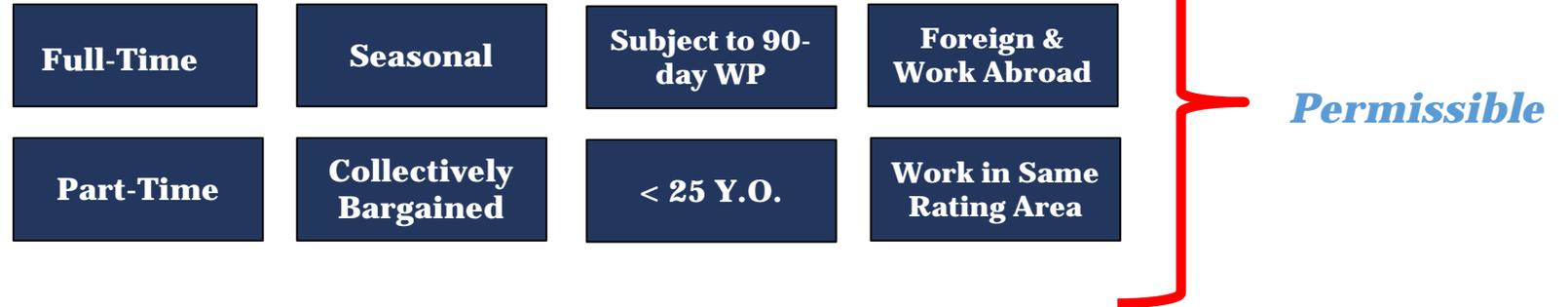
CAUTION!!

➤ Integration Rules: #1 Enrollment

- Participant and dependents must be enrolled in individual health insurance coverage or Medicare
- Must substantiate:
 - Enrollment
 - Each reimbursement request
- Employer can't offer an ICHRA to same employees it offers another group health plan

➤ Integration Rules: #2 Classes

- Under the **proposed** regulations employers could divide employees only into specific classes:

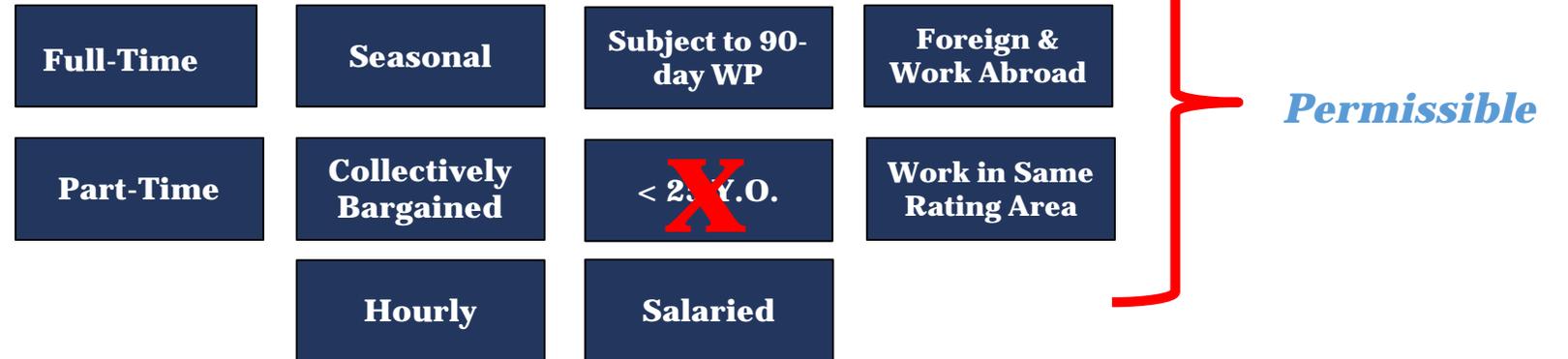


-
- Hourly versus salaried
 - CBA by CBA
 - Geographic location generally
 - Other

NOT Permissible

➤ Integration Rules: #2 Classes

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- ~~Hourly versus salaried~~
- ~~CBA by CBA~~
- Geographic location generally
- Other

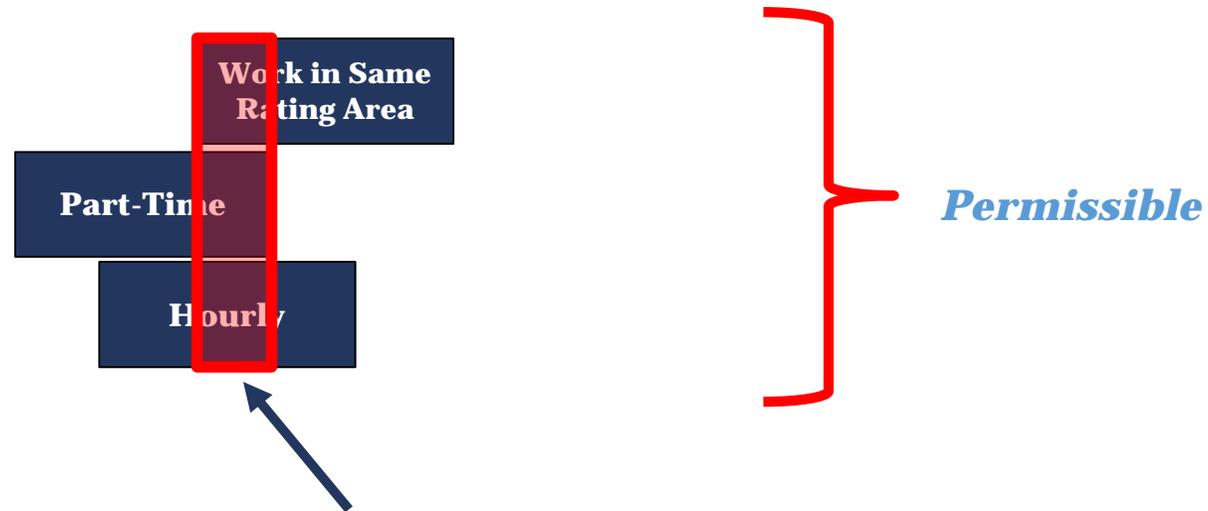
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- Employers can divide employees only into specific classes
- **These specific classes can be combined together**

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*E.g., All part-time, hourly workers
at Syracuse, NY factory*

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- **Special minimum class size rule may apply**

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< 100 EEs

Note:

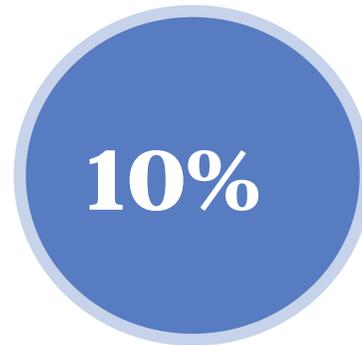
- 1. Applies at common law employer level (NOT controlled group)**
- 2. Annual determination**
- 3. Based on ICHRA offer**
- 4. Only applies to following classes: full-time, part-time, hourly, salaried, rating area**

➤ Integration Rules: Classes

- Employers can divide employees only into specific classes
- These specific classes can be combined together
- **Special minimum class size rule may apply**



< 100 EEs



100-200 EEs



≥ 200 EEs

➤ Integration Rules: Classes

- Must offer the ICHRA on the same terms and conditions to all employees within the same class
- Exceptions for:
 - Age
 - Family size
 - Former employees
- **No** “benign discrimination”

➤ Integration Rules: Opt-out

- ICHRA coverage can make someone ineligible for a premium tax credit
- Employers must allow participants to opt-out of and waive future reimbursements at least annually
- On termination of employment, either:
 - Forfeit – **OR** –
 - opt-out

➤ Integration Rules: Substantiation

- ICHRA must have “reasonable” procedures to verify enrollment in individual health insurance or Medicare
- Must get new verification prior to any expense being reimbursed
- ICHRA may rely on the attestation unless there is **actual knowledge**

➤ Integration Rules: Notice

- ICHRA must provide written annual notice to participants:
 - At least 90 days before the beginning of each plan year; and
 - No later than the date on which the participant is first eligible to participate
- Annual notice must include numerous pieces of information, including:
 - Statement regarding implications for PTC eligibility
 - Requirement to enroll in individual market coverage
 - Amounts newly made available under the ICHRA
 - Specific contact information
 - Statement regarding availability for SEPs
- **Model notice provided:** <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Downloads/HRA-Model-Notice-PDF.pdf>

➤ ICHRA Example #1

- Employer Acme has 150 employees with 7 in Illinois and 6 in New York. Employer Acme offers all employees in Illinois a traditional group health plan while offering all employees in New York an ICHRA. Neither group of employees is offered a choice between a traditional group health plan or an ICHRA

➤ ICHRA Example #1

- Employer Acme has 150 employees with 7 in Illinois and 6 in New York. Employer Acme offers all employees in Illinois a traditional group health plan while offering all employees in New York an ICHRA. Neither group of employees is offered a choice between a traditional group health plan or an ICHRA
- **Allowed under final rule because the same terms requirement is met, and the class is a permissible class based on the rating area rule. The minimum class size rule does not apply because the geographic area is at least the size of a state**

➤ ICHRA Example #2

- Employer Beta has 7 part-time employees and 50 full-time employees. Employer Beta offers all part-time employees an ICHRA worth \$500 and all full-time employees an ICHRA worth \$1000, but does not offer a traditional group health plan

➤ ICHRA Example #2

- Employer Beta has 7 part-time employees and 50 full-time employees. Employer Beta offers all part-time employees an ICHRA worth \$500 and all full-time employees an ICHRA worth \$1000, but does not offer a traditional group health plan
- **Allowed under final rule. The same terms and conditions requirement is met because part-time and full-time employees are permissible classes. The minimum class size rule does not apply because Employer Beta does not offer a traditional group health plan to any employees**

➤ EBHRAs

➤ Excepted Benefit HRA (“EBHRA”)

- Creates new HRA that is an excepted benefit
- 5 requirements:
 1. **Must** offer other major medical coverage
 2. \$1,800 annual limit (indexed annually)
 3. Subject to plan-imposed limits, **can** reimburse (a) all OOP medical expenses, and (b) premiums or self-funded plan contributions, but only for COBRA, excepted benefit health coverage, and STLDI
 4. **Must** make available to all similarly situated employees (using HIPAA standard)
 5. **Cannot** offer both an ICHRA and an EBHRA to same person

➤ EBHRA Example #1

- Employer offers full-time employees the **choice** between an EBHRA, an ICHRA, or traditional group health coverage

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- Employer offers full-time employees the choice between an EBHRA, an ICHRA, or traditional group coverage
- **Not allowed!**

CAUTION!!

➤ EBHRA Example #2

- Employer offers full-time employees major medical coverage and an EBHRA that can reimburse STLDI premiums, and part-time employees no medical benefits at all

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- Employer offers full-time employees major medical coverage and an EBHRA that can reimburse STLDI premiums, and part-time employees no medical benefits at all
- **Allowed!**

➤ ERISA Treatment

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- Final rule provides safe harbor; if criteria is satisfied, then integrated individual coverage is not subject to ERISA:
 1. Voluntary participation
 2. **No** employer (s)election or endorsement
 3. Limits on reimbursement
 4. **No** consideration received by employer
 5. Annual notification

➤ ERISA Treatment

- Cafeteria plan is also **NOT** subject to ERISA where offered as “side car” arrangement for purposes of allowing participants to pre-tax employee share of individual insurance coverage

➤ Implications for Employer Mandate Compliance

➤ Employer Mandate

- Final Regulations do not provide specific rules regarding how ICHRAs can be used as “play” strategy under employer “pay or play” rule of IRC section 4980H
 - Note: Employers cannot use an EBHRAs in a 4980H compliance strategy because EBHRAs are type of excepted benefit
- Follow-up final regulations with safe harbor(s)

➤ Implications for HSA Eligibility

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- ICHRA

- Can render an individual ineligible to make contributions to an HSA if the ICHRA reimburses IRC section 213 medical expenses (but see below)
- Will not affect HSA eligibility, if the ICHRA is designed and administered to:
 - Reimburse only individual market premiums
 - Constitute a post-deductible ICHRA
 - Constitute a limited-purpose ICHRA (although, generally no need to utilize the ICHRA in this manner)

➤ Implications for HSA Eligibility

- EBHRA
 - Can render an individual ineligible to make contributions because not otherwise permissible insurance/disregarded coverage for purposes of HSA rules (but see below)
 - Will not affect HSA eligibility, if the EBHRA is designed and administered to:
 - Constitute a post-deductible EBHRA
 - Constitute a limited-purpose EBHRA (although, generally no need to utilize the ICHRA in this manner unless seeking to reimburse preventive care)

➤ Implications for PTCs

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- **Not** eligible for a Premium Tax Credit (“PTC”) if:
 - enrolled in an ICHRA; or
 - the ICHRA is affordable and provides minimum value
- What is an affordable ICHRA?
- What ICHRAs provide minimum value?

➤ New Special Enrollment Periods

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- Creates two new special enrollment periods for individual coverage:
 1. Where employer begins offering the ICHRA or QSEHRA mid-year
 2. Where employee becomes eligible for the ICHRA or QSEHRA mid-year

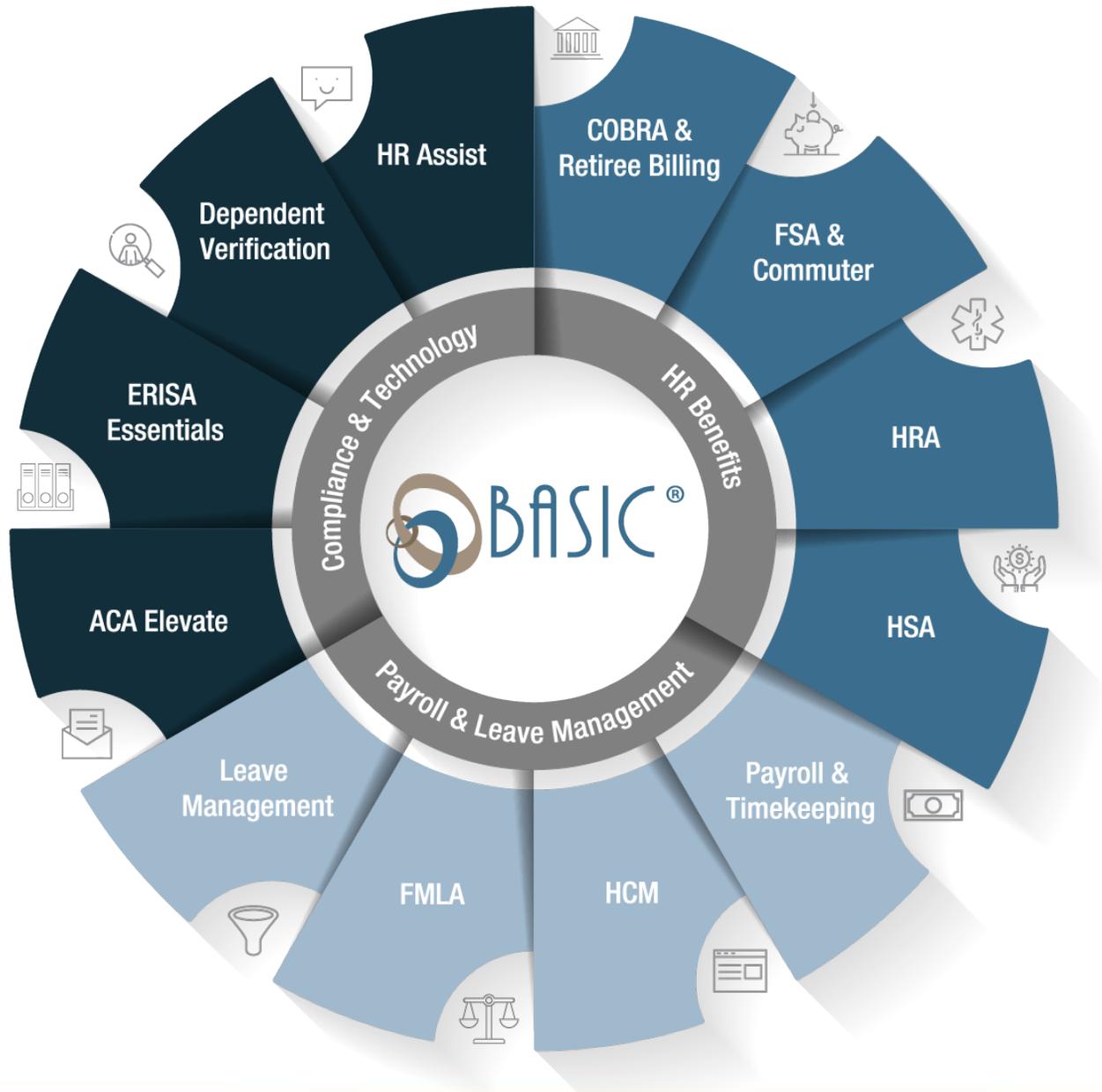
➤ Applicability Date

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1/1/20*

QUESTIONS





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