

Back to Business

Practical guidance for an ever-changing world

IRS Provides Cafeteria Plans with Flexibility Due To COVID-19

Employers are rightfully concerned that many of their employees are dealing with a host of serious financial issues caused by COVID-19. Employers have been further frustrated that Internal Revenue Service (IRS) rules have prevented them from relieving their employees' stress by allowing them to change their employee benefit elections in middle of the year. New IRS rules now allow employers to do just that in a number of ways.

For example, an employee may be considering adding or dropping health insurance coverage due to cash flow concerns as a result of a reduction in salary. Another employee might want to reduce dependent care flexible spending accounts (FSAs) contributions due to a change in summer camp plans. These employees might have been precluded from making such changes under IRS rules — until now.

New Guidance: Features

In order to provide employees with more flexibility in their employee benefit elections, the IRS released guidance (found [here](#)) that permits employers to amend their cafeteria plans for the 2020 tax year to allow employees to make changes to their elections outside a special enrollment window. Pursuant to this guidance, employers may amend their cafeteria plans to allow:

- >> Employees who previously did not elect health insurance coverage to elect coverage;
- >> Employees who previously elected health insurance coverage to change their coverage option (e.g., to switch from a high deductible plan to a lower deductible plan) and level of coverage (e.g., to switch from self-only coverage to family coverage);

The Bottom Line

The IRS is allowing employers to amend their cafeteria plans for the 2020 tax year to permit employees to make new employee benefit elections with respect to their healthcare coverage, health FSAs and dependent care FSAs.

Employers should work closely with their ERISA counsel to review the permissible changes and to decide which changes to include in an amendment to their cafeteria plans.

- >> Employees to drop their employer's health insurance coverage, provided that they provide their employer with an attestation that they have other coverage (e.g., through their spouse's employer);
- >> Employees to increase or decrease the amounts that they elected to contribute to their healthcare FSAs and dependent care FSAs on a prospective basis (i.e., amounts already contributed cannot be refunded); and
- >> Employees to apply unused amounts remaining in their healthcare FSAs and dependent care FSAs as of the end of a grace period ending in 2020 (i.e., amounts rolled over from 2019) or a plan year ending in 2020 to pay for expenses incurred for the same qualified benefit through December 31, 2020.

Limitations to Cafeteria Plans

Under this guidance, employers can use their discretion in deciding whether or not to amend their cafeteria plans for any of the above features. Additionally, employers can decide if they would like to implement any limitations to how often an employee may update his or her employee benefit elections.

Employers should discuss these changes with their ERISA counsel and consider the following before making any changes to their cafeteria plans:

- >> Employers with self-insured health plans should review their stop loss insurance policies to confirm that the stop loss insurer will treat these mid-year election changes as valid changes under the stop loss policy;
- >> Employers with fully-insured health plans should confirm with their insurers that they will allow mid-year election changes;
- >> To prevent adverse selection of health insurance coverage, employers may wish to limit elections to circumstances in which an employee's coverage will be increased or improved as a result of the election (e.g., allowing an employee to switch from self-only coverage to family coverage, or from a low option plan covering only in-network expenses to a high option plan covering expenses in or out of network);
- >> Limiting mid-year elections with respect to healthcare FSAs and dependent care FSA to amounts no less than amounts already reimbursed;
- >> Expanding the time period during which employees can use healthcare FSAs may impact an employee's eligibility to participate in a health savings account;



- >> Employers should consider whether they have the internal resources to support an expanded open enrollment period, since this guidance allows employers to have an open enrollment period that spans the entire 2020 tax year. If not, an employer may want to limit the number of times an employee may make a new election or limit the time period during which changes may be made (e.g. allowing changes only during the month of July).

These changes are currently limited to the 2020 tax year. An employer must amend its cafeteria plan by December 31, 2021 for the changes it wishes to adopt.

For More Information

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