



CAFETERIA PLAN FLEXIBILITIES

On Tuesday, May 12, 2020, the IRS **announced** relief for certain cafeteria plan elections, grace periods, and carryover benefits.

SPECIAL ELECTION CHANGES

An employer can decide whether to allow an employee to make one or more of the following changes:

- Prospectively elect medical coverage if they'd initially declined it
- Prospectively change their medical plan election to another plan and/or to include more dependents
- Prospectively drop medical coverage upon attesting in writing to having or immediately enrolling in other coverage
 - » The IRS notice provides a sample written attestation the employer may accept from the employee
 - » A written attestation is required
- Prospectively make any change in health FSA salary reduction election (newly enroll, drop, or increase/decrease the election amount)
- Prospectively make any change in daycare FSA salary reduction election (newly enroll, drop, or increase/decrease the election amount)



SPECIAL HEALTH FSA AND DAYCARE FSA GRACE PERIODS FOR 2020

Employers are permitted to limit any election change opportunity adopted to a limited election change window at the employer's discretion. With respect to health FSA and daycare FSA, the employer is permitted to restrict reduced elections to "no less than amounts already reimbursed" in order to ensure employees must pay the plan back for claims already reimbursed while still employed.

Employers that have already been flexible with cafeteria plan election changes during this calendar year due to the COVID crisis are expressly permitted to allow those election changes to stand so long as they are aligned with the guidance given above. An employer that offered flexibility not aligned with the guidance above might have to address the discrepancy (for example, if an employer had allowed someone to drop medical coverage without attesting to having or immediately securing other coverage).

An employer may optionally decide whether to extend the claims period for which health FSA and daycare FSA claims are reimbursable. Any plan year or grace period ending in 2020 may be allowed to pay or reimburse expenses incurred through December 31, 2020.

- For example, if a health FSA has a grace period that ended March 15, 2020, unused amounts as of March 15 could be used for other qualified health expenses incurred through December 31, 2020
- As another example, a health FSA plan year ending June 30, 2020, would be allowed to accept claims incurred all the way through December 31, 2020.
 - » If the plan has a carryover, the amount to be carried over could be determined as of January 1, 2021, instead of being determined July 1, 2020.
- Note health FSA flexibilities adopted might block HSA eligibility for the duration of the extended incurred claims period.
- For a daycare FSA example, a plan year ending June 30, 2020 would be allowed to accept daycare expenses incurred all the way through December 31, 2020.

We note this relief will not necessarily help an employee enrolled in a calendar year daycare FSA solely for summer day camp purposes where that summer day camp has announced closure. The employer might want to allow the employee to cease daycare FSA contributions, and the employee might want to look into other summer day camp options in order to avoid forfeiting their contributions made to date if other qualified daycare needs have not arisen yet and are not expected to arise after summer. However, employees would not be permitted to retroactively change their elections in these circumstances.

For those enrolled in a calendar year health FSA solely in anticipation of a planned medical expense that ultimately cannot be accommodated this year, the employer might want to allow such employee to cease contributions now and explore what options to make available to help. For example, over-the-counter (OTC) medications can now be reimbursable without a prescription, and if the employer has not yet adopted a carryover or grace period benefit, that could also be considered.



HEALTH FSA CARRYOVER LIMITS WILL NOW INDEX ANNUALLY

Speaking of health FSA carryover, the IRS is also changing the \$500 maximum carryover amount to a new annually indexed limit which will be 20% of the health FSA limit, rounded down to the nearest multiple of \$10. Since the health FSA salary reduction limit is \$2,750 for a plan year starting in 2020, multiplying that by 20% means the maximum unused amount from a plan year starting in 2020 allowed to be carried over to the immediately following plan year beginning in 2021 is \$550.

ANY CHANGES MUST BE FORMALLY ADOPTED

Any changes adopted for 2020 to accommodate flexibilities above must be adopted by December 31, 2021, and are specially permitted to apply retroactively.

HSA CLARIFICATIONS

The IRS also took this opportunity to clear up some confusion on COVID-19 mandates in relation to health savings accounts (HSAs).

- IRS Notice 2020-15 had declared all COVID-19 testing and treatment may be paid by the plan prior to the deductible and remain compatible with HSAs.
- The IRS clarifies this relief applies to such testing and treatment retroactive to January 1, 2020.
- The IRS also clarifies “the panel of diagnostic testing for influenza A & B, norovirus and other coronaviruses, and respiratory syncytial virus (RSV) and any items or services required to be covered with zero cost sharing under section 6001 of the Families First Coronavirus Response Act (P.L. 116-127, 134 Stat. 178 (March 18, 2020)), as amended by the CARES Act, are part of testing and treatment for COVID-19 for purposes of Notice 2020-15.”



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