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Compliance Update

Keeping you in-the-know with the latest employee benefits regulations

Cafeteria Plans May Now Be Amended to Allow Mid-Year Employee Participation in the Exchange/Marketplace

Generally, a cafeteria plan participant may not change elections mid-year in the absence of specific events causing a change in status. Such events include, but are not limited to, marriage, birth, death, loss of coverage, etc. Until recently, these "change in status" events did not include a reference to Exchange/Marketplace enrollment. This caused a substantial issue for those employees covered by a non-calendar year plan, or a plan that did not allow an open enrollment period, because these employees could not synchronize with the Exchange/Marketplace open enrollment period that operates on a calendar year basis. Therefore, an employee covered by a non-calendar year cafeteria plan would either have to maintain dual coverage, or experience a period of no coverage, in order to drop the employer plan in favor of an Exchange/Marketplace plan.

An additional problem will also arise under Health Care Reform's upcoming Employer Mandate. Under the Employer Mandate, an employee may be considered a full-time employee based on his or her hours worked during an employer's designated measurement period. This would cause the employee to remain eligible for coverage throughout his or her subsequent stability period. In some instances, the employee's hours will drop during the stability period although the employee must remain eligible for coverage until the end of the stability period. However, the employer's coverage may no longer be desirable, in such an instance, as the drop in hours may result in newly eligible tax subsidies for the employee or because the individual can longer afford the coverage due to the reduced pay from reduced hours worked.

IRS Notice 2014-55

On September 18, 2014, the IRS issued a notice that now expands the cafeteria plan "change in status" rules to allow plans to offer employees an option to revoke their elections for employer-sponsored health coverage in order to purchase a qualified health plan through the Exchange/Marketplace. This notice is effective immediately and will be published on October 6, 2014.

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Items of Note:

- The IRS Notice permits a cafeteria plan to allow a participating employee to revoke an election in order to obtain Exchange/Marketplace coverage under the following conditions:
  - ◊ The employee is seeking to enroll in Exchange/Marketplace coverage during the Exchange/Marketplace's annual open enrollment period or during an Exchange/Marketplace special enrollment period; and
  - ◊ The employee enrolls, along with any other related individuals who cease coverage due to the revocation, in an Exchange/Marketplace plan effective immediately following the revocation[1].

- The IRS Notice also provides that a cafeteria plan may allow an employee to revoke, prospectively, an election of coverage under a group health plan under the following conditions:
  - ◊ The employee changes from full-time status to part-time status and is reasonably expected to remain in part-time status; and
  - ◊ The employee enrolls, along with any other related individuals who cease coverage to the revocation, in another plan no later than the first day of the second full month following the revocation.[2]
  - ◊ This option is especially helpful to employees that may change from a full-time to a part-time position during a stability period.

- This relief is **optional** to the employer. An employer does not have to amend its current cafeteria plan documents to permit the option to revoke as a permissible change in status under its plan. If an employer chooses to allow the changes, then an amendment to the cafeteria plan documents will be necessary, as will communication of the amendment to the employees.

- This relief is only permissible so long as the cafeteria plan is not a health FSA and the medical coverage provides minimum essential coverage.

- Any amendment allowing these changes must be prospective.

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[1] The employer can rely on the reasonable representation from an employee. Actual proof from an employee that Exchange/Marketplace coverage was actually elected is not necessary.

[2] The employer can rely on the reasonable representation of an employee who is changing to part-time status that the employee and related individuals have enrolled or intend to enroll in another plan within the stated timeframe.