Benefit Brief

BENECON
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SUBJECT: Cafeteria Plan Election Changes

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This Benefit Brief discusses the 14 events that allow participants to make mid-year election changes to their Cafeteria Plans.

Cafeteria Plan regulations require that elections must be made before the beginning of a plan year and must be irrevocable. A plan may be designed, however, to allow exceptions to this irrevocability rule and permit mid-year election changes. IRS regulations recognize 14 events that permit mid-year election changes. Each of these events applies ONLY if appropriate language allowing the change is contained in the Cafeteria Plan Document. All changes that are permitted must be consistent with the event. For example, if there is a significant cost increase in a plan, the employee can drop the coverage, but would not be permitted to add the coverage. Below is the list of IRS-approved events:

1. **Change in status**: change in an employee's legal marital status (marriage, divorce, separation, death of a spouse), change in number of dependents (birth, death), change in employment status, change in dependent eligibility, change in residence, and adoption proceedings. An election change may be made only if the change in status will result in the gain or loss of eligibility for coverage of the participant or the participant's spouse or dependent. This provision applies to all qualified benefits (e.g., accident or health coverage, group term life, health FSA, and DCAP). These changes in status overlap with the situation described below in which a HIPAA special enrollment is permitted.
2. **HIPAA special enrollment rights**. In addition to the changes in status described above, HIPAA special enrollment is also permitted when the employee or a dependent loses eligibility for coverage under another plan. Although an employer is not required to allow changes under its cafeteria plan based on a HIPAA special enrollment event, the employer will be required to permit after-tax election of coverage if one of these coverage situations occurs.
3. **Cost changes, with automatic increases/decreases in elective contributions**. Automatic election changes may be made by the employer to pre-tax deductions if the cost of a benefit plan increases or decreases during the year. This provision does not apply to health FSAs.
4. **Significant cost changes**. If a cost change is considered significant, as determined by the employer, employees can be given the opportunity to drop coverage, add coverage, or change plans. This includes allowing a participant to drop coverage under his/her employer's plan and add coverage under another employer's plan that provides similar coverage. This provision does not apply to health FSAs.
5. **Significant curtailment of coverage**. If an employee, spouse, or dependent has a significant reduction in coverage during a coverage period that is not a loss of coverage, the employee may cancel the election for that coverage and instead elect to receive coverage under another benefit package option providing similar coverage. If the curtailment constitutes a loss of coverage, the employee may revoke the election for that coverage and elect coverage under another benefit package option providing similar

coverage, or drop coverage if no similar benefit package option is available. This provision does not apply to health FSAs.

6. **Addition or significant improvement of benefit package option**. If a plan adds or significantly improves a coverage option, employees may revoke their election and elect coverage under the new or improved benefit package option. This provision does not apply to health FSAs.
7. **Change in coverage under other employer plan**. This event allows election changes in two separate situations: when the other employer plan allows an election change that is permissible under the regulations, and when the other employer plan has a different period of coverage (usually a plan year). "Other employer plan" can be a plan of the same employer or another employer. This provision does not apply to health FSAs.
8. **Loss of group health coverage sponsored by governmental or educational institution**. This includes state children's health programs, state health benefit risk pools, and health plans sponsored by foreign or Indian tribal governments or organizations. This provision applies to all qualified benefits that are group health plans except health FSAs.
9. **Changes in 401(k) contributions**. A participant who has elected to participate in a 401(k) option under the cafeteria plan may change his/her deferral percentage during the plan year.
10. **COBRA qualifying events**. An employee may increase his pre-tax contributions for coverage under a current employer's plan if a COBRA qualifying event occurs. This situation will most likely become an issue if a dependent no longer qualifies as a dependent under the plan, is eligible for COBRA, but still qualifies as a tax dependent of the employee. This provision applies to group health plans subject to COBRA, including health FSAs.
11. **Judgments, decrees, or orders.** If a judgment, decree, or order (including a qualified medical child support order) resulting from a divorce, legal separation, annulment, or change in legal custody requires coverage for an employee's child, then the employee may change his/her election to add or drop coverage. This provision applies to plans that provide accident or health coverage, including health FSAs.
12. **Medicare or Medicaid Entitlement**. An employee may cancel or reduce health coverage under the employer's plan and reduce salary reductions when the employee, spouse, or dependent becomes entitled to Medicare or Medicaid. Also, losing Medicare or Medicaid entitlement would allow an employee to enroll in health coverage under the employer's plan, with an increase in salary reduction. This provision applies to plans that provide accident or health coverage, including health FSAs.
13. **FMLA Leaves of Absence**. An employee on FMLA leave can make the same election changes as an employee on non-FMLA leave. In addition, an employer must allow an employee on unpaid FMLA leave either to revoke coverage or to continue coverage but allow the employee to discontinue payment of his/her share of the premium during leave (the employer may recover the employee's share when the employee returns to work). This provision applies to plans that provide accident or health coverage, including health FSAs, and non-health benefits.
14. **Changes in pre-tax HSA contributions**. Employees may start, stop, or change an election to make HSA contributions through pre-tax salary reductions at any time during the plan year, as long as the change applies only to pay that is received after the change is made.

There are a few other events that might also permit exceptions to this irrevocability rule, but are not specified in the IRS regulations. These events include USERRA leaves of absence, mistakes, participants who fail medical underwriting, election changes needed to pass nondiscrimination tests or maintain qualified plan status, and automatic loss of coverage.

Cafeteria plans generally do not have to allow participants to change their elections. However, most employers design their plans to let participants make election changes as often and as widely as the IRS permits. Plans that are designed to allow mid-year election changes must do so in accordance with IRS regulations. Plans can be more restrictive, but never more liberal than the regulations allow.

Many plans impose a time limit (30 or 60 days) on when an election change must be made following a permitted election change event. However, limits are not required by the regulations.

Employers must confirm that the election changes conform with any applicable insurance policy rules and the terms of their plan documents. Employers should provide detailed information about the election change rules in the cafeteria plan summary, benefit plan SPDs, and employee election forms. Employers should also ensure that the pre-approval is consistent with applicable state wage withholding laws.

If you have questions about allowable mid-year election changes to cafeteria plans, please contact Danielle Omans at The Benecon Group at domans@benecon.com or at the number below.

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