



COVID-19 Related Relief for Cafeteria and Flexible Spending Plans

June 5, 2020

On May 12, 2020, the Internal Revenue Service (IRS) released new COVID-19 guidance (Notice 2020-29 and Notice 2020-33), providing additional flexibility to cafeteria plans, flexible spending account plans and other reimbursement programs in light of the COVID-19 pandemic.

The COVID-19 pandemic has caused unanticipated changes in the need for medical and dependent care. Employees who initially declined to elect employer-sponsored health coverage may wish to elect health coverage and even those who had previously elected health coverage may seek to change their elections given the changes in circumstances caused by the pandemic. Also, some employees may have an increase or decrease in the need for dependent care assistance due to the unanticipated closure of schools and child care providers and changes to the employee's work location or schedule.

Mid-Year Change Relief for Cafeteria Plans - IRS Notice 2020-29

Notice 2020-29 allows sponsors to amend their cafeteria plans to permit employees to make certain prospective mid-year election changes for employer-sponsored health coverage, health FSAs, and dependent care assistance programs during calendar year 2020. A cafeteria plan may be amended to permit employees who are eligible to make salary reduction contributions under the plan to:

- Change elections with respect to employer-sponsored health coverage, as follows:
 - make a new election on a prospective basis, if the employee initially declined to elect employer-sponsored health coverage;
 - revoke an existing election and make a new election to enroll in different health coverage sponsored by the same employer on a prospective basis (including changing enrollment from self-only coverage to family coverage); and
 - revoke an existing election on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer.
- Revoke an election, make a new election, or decrease or increase an existing election applicable to a health FSA on a prospective basis; and
- Revoke an election, make a new election, or decrease or increase an existing election regarding a dependent care assistance program on a prospective basis.

An employer utilizing this relief is not required to provide unlimited election changes but may, in its discretion, determine the extent to which such election changes are permitted and applied, provided that any permitted election changes are applied on a prospective basis only, and the changes to the plan's election requirements do not result in failure to comply with the nondiscrimination rules applicable to cafeteria plans.

Extended Claims Period for Health FSAs and DCAPs - IRS Notice 2020-29

For unused amounts remaining in a health FSA or a dependent care assistance program under the cafeteria plan as of the end of a grace period or plan year ending in 2020, the plans may be amended to permit employees to apply those unused amounts to pay or reimburse medical care expenses or dependent care expenses, respectively, incurred through December 31, 2020. The extension of time for incurring claims is available both to plans that have a grace period or provide for a carryover.

Plan Amendments - IRS Notice 2020-29

Notice 2020-29 confirms that the relief provided in Notice 2020-15 regarding high deductible health plans (HDHPs) and expenses related to COVID-19, and in section 3701 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) regarding an exemption for telehealth services, may be applied retroactively to January 1, 2020.

With respect to the requirement to amend the written plan, an amendment to make changes provided for under Notice 2020-29 for the 2020 plan year must be adopted on or before December 31, 2021, and may be effective retroactively to January 1, 2020, provided that the employer informs all individuals eligible to participate in the cafeteria plan of the changes to the plan.

Increased Carryover Limit for Health FSAs - IRS Notice 2020-33

With Notice 2020-33, the IRS has increased the carryover limit of unused amounts remaining as of the end of the plan year in a health FSA from \$500 to \$550 for 2020. These unused amounts may be carried over to pay

or reimburse a participant for medical care expenses incurred during the following plan year. Individuals may wish to increase their health FSA contributions, or begin to make health FSA contributions, for 2020, as a result of this increased carryover amount.

Timing for Premium Reimbursements - IRS Notice 2020-33

Notice 2020-33 also provides that a plan is permitted to treat an expense for a premium for health insurance coverage as incurred on (1) the first day of each month of coverage on a pro rata basis, (2) the first day of the period of coverage, or (3) the date the premium is paid. Thus, for example, an individual coverage HRA with a calendar year plan year may immediately reimburse a substantiated premium for health insurance coverage that begins on January 1 of that plan year, even if the covered individual paid the premium for the coverage prior to the first day of the plan year.

Please also see our previous Client Advisory from May 12, 2020, on the extension of certain deadlines relating to benefit plans: [Linked here](#).

If you have questions or would like additional information, please contact a member of our Employee Benefits and Executive Compensation Practice Group.



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