

May 20, 2020

IRS Issues COVID-19 Cafeteria Plan Guidance for Employers

Human Resources & Employment

The IRS issued [Notice 2020-29](#) on May 12, 2020, to assist with the response to the COVID-19 pandemic. The notice provides flexibility for mid-year 2020 elections under a \$125 cafeteria plan for employer-sponsored health coverage, health Flexible Spending Arrangements (FSA), and dependent care assistance programs (DCAP). It also provides flexibility to carryover unused benefits in an FSA or DCAP for grace periods or plan years ending in 2020.

Section 125 Elections

Employers may permit eligible employees to make the following mid-year elections for the plan year ending in 2020 even though the employee does not otherwise satisfy the requirements for mid-year elections under the §125 regulations:

- To elect the employer sponsored health coverage if the employee initially declined coverage.
- To elect a different coverage under the employer-sponsored health coverage (including changing from self only to family coverage).
- To revoke an existing elected employer-sponsored health coverage but only if the employee attests in writing they are or will be enrolled in other health coverage not sponsored by the employer (e.g., the health plan sponsored by the employer of the employee's spouse). An attestation form is included in the notice.
- To revoke or make a new election or change coverage under the employer-sponsored FSA or DCAP.

Elections are prospective only.

Extended Claims Period for FSA and DCAP

Employers can amend their health FSA and DCAP to provide an extended period to apply unused amounts remaining in a health FSA or dependent care assistance program as of the end of any grace period ending in 2020 or a plan year ending in 2020 to pay or reimburse expenses incurred for the same benefit in calendar year 2020. For example, any unused 2019 benefit under a calendar year FSA at the end of the 2019 grace period (e.g., March 15, 2020) may be used for other unreimbursed health benefits incurred in 2020. The notice contains examples of this change for non-calendar year plans.

Plan Amendments

Employers may determine which plans are amended and generally the scope of the amendments. Plan amendments must be adopted on or before Dec. 31, 2021, retroactive to Jan. 1, 2020, and the employer must administer the plan consistent with the amendment.