

COVID-19, Publications

Ch-Ch-Ch-Changes (In Elections and Grace Periods)

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The IRS released two Notices this week related to cafeteria plans and flexible spending arrangements (“FSAs”). Notice 2020-29 provides relief for cafeteria plans in response to the current COVID-19 pandemic, and Notice 2020-33 provides a permanent increase to the carryover limit for health FSAs.

Due to the COVID-19 pandemic, many employees’ reasonable expectations when they made their coverage elections for this year have significantly changed. For example, an employee may have waived health coverage for a child and now realized the child needs coverage. Or, the employee may incur much less in medical and dependent care expenses this year because doctor, dentist, eye doctors’ offices and childcare centers have been closed for months. On the other hand, an employee may have incurred much more in medical and dependent care expenses because he or she had COVID-19 or needed childcare because of school closures. Notice 2020-29 provides, among other things, some much-needed flexibility for mid-year election changes under an employer’s cafeteria plan to help account for the fallout from the pandemic. It also extends the periods after which participants must forfeit FSA balances. This is welcome news for employers that want to be able to accommodate their employees’ needs without running afoul of the cafeteria plan rules.

Unrelated to COVID-19, Notice 2020-33 provides additional welcome relief in the form of a modest increase in the carryover limit of unused amounts remaining as of the end of a plan year in a health FSA. The Notice also clarifies the ability of a health reimbursement arrangement (“HRA”) to reimburse premium expenses incurred prior to the beginning of the plan year for coverage provided during the plan year.

We summarize the provisions of the two Notices below.

Cafeteria Plan Mid-Year Election Changes (effective January 1, 2020)

1. What does the Notice allow?

An employer can allow employees to make prospective election changes during calendar year 2020 regarding employer-sponsored health coverage, health FSAs, and

dependent care FSAs, regardless of whether the basis for the election change satisfies the existing criteria in the cafeteria plan regulations (in Treas. Reg. § 1.125-4). Notice 2020-29 explicitly permits employers to limit the period during which employees may make these mid-year election changes.

In particular, Notice 2020-29 permits the following:

- Elect Employer-Sponsored Health Coverage. Employees may make a new election to enroll in employer-sponsored health coverage on a prospective basis if the employee initially declined to elect employer-sponsored health coverage.
- Decline Employer-Sponsored Health Coverage.
 - Employees may revoke an existing election for employer-sponsored health coverage 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 to family coverage).
 - Employees may revoke an existing election for employer-sponsored health coverage on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other comprehensive health coverage not sponsored by the employer.
 - An employer may rely on an employee's written attestation, unless the employer has actual knowledge that the employee is not, or will not be, enrolled in such other comprehensive health coverage. The Notice provides an example of an acceptable written attestation
- Changes to Health FSA Contributions. Employees may revoke an election, make a new election, or decrease or increase an existing health FSA election on a prospective basis.
- Changes to Dependent Care FSA Contributions. Employees may revoke an election, make a new election, or decrease or increase an existing dependent care FSA election on a prospective basis.