
Affordable Care Act - Discretionary Updates for Cafeteria Plans

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The Internal Revenue Service has provided guidance with respect to mid-year changes for pre-tax payments to Section 125 Cafeteria Plans for group health coverage and the interplay with the Affordable Care Act.

I. Revocation of Compensation Election for Health Care Coverage

Employers who permit employees to pay their share of the group health insurance premiums with pre-tax dollars must offer this benefit through a written Cafeteria Plan established under Section 125 of the Internal Revenue Code.

In general, participants may not change their pre-tax compensation payment elections after the first day of the plan year unless they have a change in family circumstances or other government approved events.

The IRS has expanded the permissible circumstances in which participants can revoke their pre-tax compensation payment election and elect coverage under another health plan that provides for minimum essential coverage or a health plan offered by the government health insurance marketplace.

The IRS guidance now permits, with the proper plan amendments, the following events that will permit participants to revoke pre-tax compensation payment elections mid-year:

A. Revocation Due to Reduction in Hours of Service. A cafeteria plan may be amended to allow an employee to prospectively revoke a mid-year election of coverage under the group health plan that is not a health flexible spending account if: The employee's hours are reduced so that the employee will reasonably be expected to average less than 30 hours of service per week after the change, even if that reduction does not result in the employee ceasing to be eligible under the group health plan due to the stability rules under the Affordable Care Act; and The employee's revocation of coverage under the group health

plan corresponds to the intended enrollment of the employee, and any related individuals who cease coverage due to the revocation, in another plan that provides minimum essential coverage with the new coverage effective no later than the first day of the second month following the month that includes the date the original coverage is revoked.

B. Revocation Due to Enrollment in a Government Marketplace Health

Plan. A cafeteria plan may be amended to allow an employee to prospectively revoke a mid-year election of coverage under the group health plan that is not a health flexible spending account if:

The employee is eligible for a special enrollment period to enroll in a health plan through a government marketplace, or the employee seeks to enroll in a government marketplace health plan during the government marketplace's annual open enrollment period; and

The revocation of coverage under the group medical plan corresponds to the intended enrollment of the employee (and spouse and dependents, if applicable) in a government marketplace health plan for new coverage that will be effective no later than the day immediately following the last day that the employer group medical plan is effective.

II. Required Plan Amendment.

To allow the new permitted election changes under the IRS guidance, a cafeteria plan must be amended to provide for such election changes. The amendment must be adopted on or before the last day of the plan year in which the elections are allowed, and may be effective retroactively to the first day of that plan year, provided that the cafeteria plan operates in accordance with the guidance under this notice and the employer informs participants of the amendment. However, an election to revoke coverage on a retroactive basis is not allowed. In addition, no changes are permitted under the IRS guidance as to any flexible spending account elections.