



California Employers Subject to New FSA Notice Requirements

October 11, 2019

A new California law requires employers that sponsor flexible spending accounts ("FSAs") to notify employees in *two different ways* about any deadline to withdraw funds before the end of the year. The law applies to health FSAs and dependent care FSAs and will take effect January 1, 2020.

Assembly Bill 1554

At a mere three sentences long, the new law raises more questions than it answers. What is clear is that the law aims to apply to any employer that sponsors an FSA and imposes a mid-year reimbursement deadline. Mid-year reimbursement deadlines are quite common. For example, an employer may require former employees to submit all claims for reimbursement within 30-90 days of their termination.

Covered employers must notify all employees who participate in an FSA of the deadline to withdraw funds. In addition, notice must be provided in *two different forms*. Notice may be given several ways, including in-person or over the telephone, or via mail, e-mail or text message. However, only one of the notices may be given electronically. The law does not specify when notices must be provided or the contents of the notices. Nor does the law identify the penalty for noncompliance.

ERISA Preemption?

ERISA generally preempts state laws that relate to ERISA plans. Since health FSAs are ERISA plans, ERISA likely preempts California's new notice requirements with respect to health FSAs. However, employers should also be aware that California agencies can be hesitant to recognize ERISA preemption absent a court ruling. In addition, dependent care FSAs are *not* ERISA plans and therefore are subject to the new state law.

Next Steps

Employers that allow employees to submit FSA claims through the end of the year regardless of employment status do not need to act. However, all other employers that sponsor an FSA should decide whether to amend their plans to allow for claim reimbursements through the end of the year. Employers wishing to continue their current practices will need to determine the best way to provide notices to employees, or decide that ERISA preempts the notice requirements (at least with respect to its *health* FSA).

Additional Information

If you have any questions regarding A.B. 1554, or if you would like assistance amending your plan documents to avoid this law's application, please contact a member of our Employee Benefits Practice Group listed below. For more information concerning our practice, please visit us at www.KutakRock.com.

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