



## COVID-19 Relief – Major Changes to Cafeteria Plans and a Freeze on Employee Benefit Deadlines

COVID-19 and the many pieces of legislation seeking to curb its effects on the economy has the Internal Revenue Service (“IRS”) issuing new rules and regulations at a furious pace. The IRS recently issued guidance that makes substantial, though temporary, changes to § 125 cafeteria plans (“§ 125 plans”). Additionally, a joint rule from the Department of Labor and the IRS essentially freezes certain timeframes for COBRA coverage, special enrollment in medical plans, and other periods essential for administering employee benefit plans.

### Cafeteria Plan Changes - Notices 2020-29 & 2020-33

#### *Midyear Elections*

The IRS now allows (but does not require) employers to amend cafeteria plans to permit certain midyear election changes for employer-sponsored health coverage, health flexible spending arrangements (“FSAs”), and dependent care assistance programs (“DCAPs”). The following changes are only available in 2020 and allow employees to take the following actions on a prospective basis:

- Elect health coverage, even if they previously declined coverage when initially offered at the beginning of the year;
- Revoke an election for one health plan and make a new election for a different health plan, including changing enrollment from self-only coverage to family coverage, and vice versa;
- Revoke an existing election for health coverage, provided the employee attests that the employee is enrolled or will enroll in other health coverage (such as a spouse’s plan);
  - To accept an employee’s revocation of existing coverage, the employer must receive the written attestation from the employee. A model attestation can be found in [here](#).
- Revoke, decrease, increase, or make a new election regarding a health FSA or DCAP.

#### *Increase in Carryover Amount for Health FSAs*

Employers may amend a health FSA to increase the amount of unused funds that may be [carried over each year](#). Previously, the limit was \$500; it is now indexed for inflation. The amount that can be carried over from 2020 to 2021 is now \$550.

#### *Carryover Under Health FSAs and Dependent Care Assistance Programs*

Employers may amend their § 125 plans to permit employees to apply unused health FSA or DCAP dollars as of the end of a grace period ending in 2020 to pay or reimburse expenses incurred through December 31, 2020. An employer may also amend a § 125 plan to temporarily extend the period for incurring claims with respect to the 2019 plan year for purposes of using carryover funds.

- This extension only applies to § 125 plans that provided for a grace period or a carryover from 2019 into 2020.
- The prior rule limiting plans to either a grace period or a carryover is still in place; plans may not provide a grace period and a carryover.

### *Plan Amendments*

If an employer wishes to make any of the changes listed above, an amendment to the § 125 plan is required. The amendment must be adopted on or before December 31, 2021 and may be effective retroactively to January 1, 2020.

### *High Deductible Health Plans and the CARES Act*

The [CARES Act](#) provides a temporary safe harbor for high deductible health plans providing telehealth and other remote care services. Notice 2020-29 clarifies that this safe harbor applies to medical items and services provided on or after January 1, 2020.

## **Extension of Certain Time Frames for Employee Benefit Plans**

The DOL and the IRS released a joint notification extending several time frames for employee benefit plans. The extensions seek to relieve plan administration problems caused by COVID-19; however, we believe they will actually create additional work for employers.

Under the new rule, the period from March 1, 2020 to 60 days after the announced end of the COVID-19 national emergency is considered the “Outbreak Period.” During the Outbreak Period, the following deadlines are tolled, so employees have more time to take certain actions.

- The 30-day period (or 60-day period under CHIP, if applicable) to request special enrollment if the employee or their dependent loses coverage under another plan or when an individual becomes a dependent of the employee;
- The 60-day period for a participant to elect COBRA;
- The deadlines for making all COBRA premium payments;
  - If a participant delays COBRA premium payments under this rule, they must pay *all* of the accrued premiums when the Outbreak Period ends.
- The dates for an individual to notify the plan of a qualifying event or determination of disability for purposes of COBRA continuation coverage;
- The date within which individuals may file a benefit claim under the plan’s claims procedures;
- The date within which claimants may file an appeal of an adverse benefit determination under the plan’s claims procedures;
- The date within which claimants may file a request for external review after receipt of an adverse benefit determination or final internal adverse benefit determination;
- The date within which a claimant may file information to perfect a request for federal external review upon a finding that the request was not complete.

For example, if the national emergency ends June 29, the Outbreak Period will end 60 days later on August 28. An employee who gives birth during the Outbreak Period will have until 30 days after August 28 (September 27) to exercise her special enrollment right to enroll her child in her employer’s plan.

## Action Items

- Employers should decide as soon as possible whether to allow for the increased flexibility available for employees under § 125 cafeteria plans.
- Employers with self-insured health plans should consult with their stop-loss carriers if they decide to allow individuals another chance to enroll in a health plan midyear or change coverage midyear.
- Employers should start talking to their benefit plan administrators to understand how they will handle the increased administration and complexities of certain time frames tolled during the Outbreak Period.
- If changes are made to any of your plans, plan amendments will be necessary, and changes will need to be communicated to participants.

If you have any questions or need assistance, please contact a member of the Kutak Rock [Employee Benefits Practice Group](#).

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