

EXPERT UPDATE



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Code §125 – Cafeteria Plan Requirements

Many employers established a Cafeteria Plan well over 20 years ago, and it is very likely, because of IRS rules, that a written plan document was formally adopted at the time the plan was established, and a booklet summarizing the plan was distributed to participants. The IRS cafeteria plan regulations indicate that if there is no written cafeteria plan document or the plan document does not comply with applicable requirements regarding specific content, then the plan cannot be a cafeteria plan. Documents that were drafted many years ago will be out of date unless you have incorporated the required cafeteria plan information into an updated ERISA health and welfare Plan Document and Summary Plan Description (SPD). HIPAA and the Affordable Care Act in particular have influenced the content contained in Cafeteria Plan documents. If your documents are more than a few years old, or you cannot locate them at all, **NOW** is the time to get updated Cafeteria Plan materials.

Overview:

A cafeteria plan is a program that employers can use to help employees pay for certain expenses, like health insurance, dental insurance, unreimbursed medical expenses and dependent care services with pre-tax dollars. Employees like cafeteria plans because they can use pre-tax dollars to buy benefits; employers like cafeteria plans because employees are happier employees and they also save on taxes.

Under Code § 125, the term “cafeteria plan” means a written plan under which all participants are employees, and the participants may choose among two or more benefits consisting of cash and qualified benefits. A “salary reduction plan” is a very common type of cafeteria plan that provides employees with a choice to receive their full salary or have their salary reduced to purchase qualified benefits the plan offers. There are three types of Salary Reduction Plans:

1. Premium Payment Plan (also called Premium Only Plan or Premium Conversion Plan)
2. Plan that offers Flexible Spending Account (FSA) arrangements (health FSA, Dependent Care benefits, or both)
3. Premium Payment Plan with Flexible Spending Accounts

ACA Implications on Cafeteria Plans:

The Affordable Care Act impacts cafeteria plan administration and design. Over the past few years, employers have modified their Cafeteria plan procedures and plan materials to comply with the following:

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- Tax-favored treatment for employer sponsored group health for children who have not attained age 27 as of the end of the tax year regardless of dependent tax status
- \$2,500 annual cap on health FSAs
- New requirements that certain over-the-counter drugs must be prescribed
- Simple cafeteria plan provisions are available to certain small employers
- Restriction on offering Exchange coverage as a qualified benefit under a cafeteria plan
- Starting in 2015, the Employer Shared Responsibility will restrict employers from requiring pro of other coverage in order to decline employer-provided coverage

If you have not purchased new documents recently, please contact Henderson Brothers, Inc. for information on what services are available for Cafeteria Plan materials.



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