



IMPORTANT EMPLOYEE BENEFITS REGULATIONS UPDATES

Temporary COVID Relief for Section 125 Cafeteria Plans

On February 18, 2021, the IRS released (*click the link for detailed 34-page notice*) [Notice 2021-15](#) to clarify special rules for Section 125 Cafeteria plans which include Flexible Spending Accounts (FSAs) and the dependent care component.

Review of Special Rules for Health FSAs and Dependent Care

The notice is designed to clarify the application of the updated special rules for health FSAs and Dependent Care under the Consolidated Appropriations Act, 2021 (CAA). The CAA provides flexibility for carry-overs of unused balances, extends the period of time for incurring claims, allows post-termination reimbursements from health FSAs, and provides special rules for dependents who “age out” of Dependent Care coverage during the COVID-19 public health emergency. The notice provides examples and details regarding these rules.

Election Changes for Section 125 “Mid-year”

Section 125 plans may allow employees to rescind or make election changes in certain circumstances. The notice does clarify that employers are able to decide how long to allow mid-year election changes with no change in status during the plan year and are able to limit the number of election changes during the plan year that are not associated with a qualified change in status.

Over-the-Counter Drugs

The notice also provides relief with respect to plan amendments expanding reimbursable expenses for health FSAs and Health Reimbursement Arrangements (HRAs) to include over-the-counter drugs and menstrual care products. Amendments to these plans must normally be made on a prospective basis, but these amendments may allow these reimbursements beginning on or after Jan. 1, 2020.

Wellness Incentive Proposed Regulations Withdrawn

On February 12, 2021, the Equal Employment Opportunity Commission (EEOC) withdrew two proposed rules it previously issued in January 2021 on Wellness Programs under the Americans with Disabilities Act (ADA) and the Genetic Information Non-Discrimination Act (GINA). For information on this adjustment click here:

<https://www.eeoc.gov/regulations/rulemaking>.

Overview of the Proposed Rules

The proposed rules were issued in response to a federal court decision vacating part of prior EEOC rules describing the incentives an employer could offer as part of a wellness program in certain circumstances. The proposed rules would have generally allowed only very small incentives to be offered for wellness program participation. Exceptions allowing larger incentives would have applied to health contingent wellness programs that are part of, or qualify as, group health plans under the ADA rules.

Proposed Rules are Withdrawn

These proposed rules were withdrawn because they were not published by Jan. 20, 2021, the time of President Joe Biden's inauguration. Upon inauguration,

the President issued a memorandum requiring all agencies to immediately withdraw any proposed rules that had not yet been published. As a result, the next step for these proposed rules are currently under review and consideration. Click to see the President's memorandum on this topic:

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/>.

Important Disclaimer: We strongly recommend connecting with a licensed professional for an assessment and a complete understanding of your current and future employee benefits coverages and compliance requirements.

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