A Better Partnership®



Cafeteria Plans Elections: When Should Requested Mid-Year Changes Be Approved?

8/9/2011 April A. Goff

Participants in a cafeteria plan are only permitted to change their elections mid-year in accordance with IRS regulations. Those regulations have been in effect for over a decade, but many plan sponsors still struggle with whether a particular request should be approved. This article is intended to be a refresher of the rules and a reminder that help is available if a particular situation stumps you in your plan's administration. While the rules are relatively clear, they're easily muddled when dealing with the intricacies of a particular participant's situation.

Do participants have to be allowed to change their elections on a pre-tax basis?

A cafeteria plan must permit participants to change their elections at least annually during open enrollment. Cafeteria plans are not generally required to allow mid-year requests to change elections, but the overwhelming majority of plans do. Individuals who qualify for coverage due to a HIPAA Special Enrollment right or a Qualified Medical Child Support Order must be permitted to enroll in coverage mid-year, but an employer can require that the coverage be made on a post-tax basis outside of the cafeteria plan until the next enrollment period.

What type of events may trigger a valid mid-year election change?

The outline below lists all of the permissible mid-year election triggering events. We caution however, that the cafeteria plan document must be reviewed to determine whether a change is permissible before a request is approved. A plan document may generally refer to guidance provided in temporary, final or IRS regulations or may specify explicitly which events the plan will recognize as permitting a mid-year election change.

Change in Status:

- change in marital status (marriage, divorce, legal separation or annulment);
- change in number of dependents (due to birth, death, adoption and placement for adoption);

A Better Partnership®



- change in employment status of employee or employee's spouse or dependent (including termination or commencement of employment, commencement of or return from an unpaid leave of absence and a change in worksite);
- dependent ceases to satisfy eligibility requirements (including attainment of age, student status or any similar circumstance);
- change in residence of the employee, spouse or dependent that affects eligibility for coverage (e.g., if an employee moves from outside the service area of his health plan) and;
- commencement or termination of adoption proceedings, for purposes of adoption assistance provided through a cafeteria plan.

Automatic Cost Changes: The plan's cost increases or decreases during a period of coverage.

Significant Cost Change: The cost charged to the employee significantly increases or decreases during the period of coverage.

Significant Curtailment of Coverage: An individual has a significant curtailment of coverage during a period of coverage and similar coverage is available under the plan.

Addition or Improvement of a Benefit Package Option: A new benefit package option is made available under the plan during the coverage period, or an existing option is significantly improved.

Change in Coverage of Spouse or Dependent under Another Employer Plan: A change is made under another employer's plan in accordance with IRS regulations or the other employer has a different period of coverage.

Loss of Other Health Care Coverage: If the employee, spouse or dependents lose coverage under any group health plan sponsored by a governmental or educational institution—including coverage under a State Children's Health Insurance Program (SCHIP).

HIPAA Special Enrollment Rights: A participant may be permitted to revoke an existing election and/or to make a new election for HIPAA Special Enrollment Rights.

COBRA Qualifying Events: A participant may be permitted to elect to increase payments under the employer's cafeteria plan to pay for continuation coverage for the employee, spouse or dependents.

Judgments, Decrees or Orders: An employee may be permitted to add coverage under a Qualified

A Better Partnership®



Medical Child Support Order or to cancel coverage if the judgment requires another individual to cover that child.

Entitlement to Medicare or Medicaid: If an employee, spouse or dependents either become entitled to or lose coverage under Medicare or Medicaid, the employee can make a corresponding election to cancel, reduce or reinstate coverage under the accident or health plan.

FMLA or USERRA Leave: An employee taking leave under the federal Family and Medical Leave Act or Uniformed Services Employment and Reemployment Rights Act may revoke an existing election of accident or health plan coverage.

Pre-Tax HSA Contributions: If HSA contributions are permitted under the cafeteria plan, employees may elect, revoke or change salary reduction elections for HSA contributions with respect to salary that has not become currently available at the time of the election. A participant must be permitted to change his or her election at least on a monthly basis.

What other rules apply?

Any requested change in election must be on account of and correspond with the event. This consistency rule applies to each participant, spouse and dependent. For example, if an employee elects single coverage during open enrollment and then marries someone who has a child that would satisfy the definition of an eligible dependent under the group health plan, the employee may add the new spouse and stepchild mid-year. If the employee also requested at the same time to drop life insurance coverage, that would need to be denied as it would be a change that was not consistent with the change in status event.

The plan may permit "tag-along" changes for existing spouses and dependent children. The plan should consistently follow the same rules for all similarly situated participants in order to avoid potential litigation and to avoid adverse tax consequences to the plan participants and the potential disqualification of the plan.