



Legal Alert: IRS Issues Final Regulations on Comparable Contributions to HSAs

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The Internal Revenue Service (IRS) has issued final regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under § 4980G, where an employee has not established an HSA by December 31st, and where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses.

The new regulations address issues that were not addressed in prior regulations. The regulations apply to employer contributions made for calendar years beginning on or after January 1, 2009.

Code § 223 permits eligible individuals to set up HSAs if they are covered by high-deductible health plans (HDHP) and not covered by other non-high-deductible health plans (subject to certain exceptions). Under § 4980G, an excise tax is imposed on an employer that fails to make comparable contributions to the HSAs of its employees.

Late Established HSAs

The new regulations provide that an employer does not fail to satisfy the comparability rules merely because it fails to make a contribution where an employee has not set up an HSA or where the employer does not know that the employee has set up an HSA, if it meets certain notice and contribution requirements.

Notice: The employer must provide notice to all eligible employees who have not established an HSA by December 31st and to those who may have established an HSA but have not informed the employer. The notice must be provided by January 15 of the following year and must inform employees that the employer will make comparable contributions for the prior year for eligible employees who, by the last day of February, both establish an HSA and notify the employer (in accordance with a procedure specified in the notice) that they have established an HSA.

Contribution: With regard to each eligible employee who establishes an HSA and so notifies the employer on or before the last day of February, the employer must contribute to the HSA comparable amounts for the prior year (taking into consideration each month that the employee was a comparable participating employee) and reasonable interest. The contribution must be made by April 15.

The regulations provide a model notice that employers may use and state that

the notice may be provided electronically.

Acceleration of Employer Contributions

The regulations permit an employer to accelerate all or part of its contributions to the HSAs of employees who have incurred qualified medical expenses exceeding the employer's cumulative HSA contributions at that time. If an employer accelerates contributions to the HSA of any eligible employee, it must make accelerated contributions available throughout the calendar year on an equal and uniform basis to all such eligible employees. Employers must establish reasonable, uniform methods and requirements for accelerated contributions and the determination of medical expenses.

The employer will not be deemed to have violated the comparability rule because an employee who has received an accelerated contribution for qualifying medical expenses has received, for a given period of time, HSA contributions that exceed those received by comparable employees who have not incurred such expenses, so long as all comparable employees ultimately receive HSA contributions in the same amount or same percentage for the calendar year. An employer is not required to pay interest on accelerated contributions.

If you have any questions regarding the new regulations or other employee benefits issues, please contact Elizabeth Ward, an attorney in our Chicago office, at bward@fordharrison.com or 312-332-0777, or any member of Ford & Harrison's Employee Benefits practice group.