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IRS Issues Relief for Cafeteria Plans by Promoting Increased Flexibility

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Employers now have an additional method to help their employees who have been financially impacted by the COVID-19 pandemic. Specifically, on May 12, 2020, the Internal Revenue Service (“IRS”) issued two notices concerning cafeteria plans intended to increase participant flexibility. These rules amount to allowing employees to make mid-year changes to their coverage elections that would ordinarily only be allowed during open enrollment, easing the “use it or lose it” rule for flexible spending accounts, and allowing more generous carryovers of unused dollars. While all provisions are optional, cafeteria plan sponsors should consider the impact adding the relief to their plans would have on the participant population.

New Mid-Year Election Change Events for Calendar Year 2020

A cafeteria plan sponsor may now allow each eligible employee to make certain prospective election changes (including an initial election) during calendar year 2020. Specifically, if permitted by the cafeteria plan sponsor:

- With respect to employer-sponsored health coverage, employees may make a new election, as long as the employee initially declined to elect employer-sponsored health coverage.
- With respect to employer-sponsored health coverage, employees may cancel an existing election and make a new election to enroll in different health coverage, as long as the coverage is sponsored by the employer.
- With respect to employer-sponsored health coverage, employees may cancel an existing election, provided the employee affirms he or she enrolled (or immediately will enroll) in other health coverage not sponsored by the employer. As long as the employer does not have actual knowledge to the contrary, the employer may rely on a written statement from the employee that he or she has or

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will enroll in other coverage.

- With respect to a health flexible spending account (“health FSA”), employees may cancel an election, make a new election, or decrease/increase an existing election going forward.
- With respect to a dependent care flexible spending account (“dependent care FSA”) employees may cancel an election, make a new election, or decrease/increase an existing election going forward.

Employers can limit the extent of the optional election change rules, so long as the limits do not violate the cafeteria plan nondiscrimination rules. Cafeteria plan sponsors should also contact their benefit plan administrators or insurers to confirm the platform will also permit the mid-year change before proceeding with the cafeteria plan modifications.

Extension of Expense Period (“Use It or Lose It”) for 2020

An employer may amend one or more of its cafeteria plans to apply unused amounts remaining in a health FSA or dependent care FSA as of the end of a 2-½ month grace period ending in 2020 (generally, amounts directed to these accounts in 2019) or a plan year ending in 2020 to pay or reimburse expenses sustained for the same qualified benefit through December 31, 2020. The extension of time is available both to cafeteria plans that have a grace period and plans that provide for a carryover.

Indexing of Health FSA Carryover Limit

The IRS has indexed the \$500 carryover limit for health FSA plan years beginning in 2020. Specifically, the limit has increased to \$550.

Conclusion

Amendments need not be made for any of the optional rules (if applicable to 2020) until December 31, 2021, but employers would need to notify employees of the changes and operate the cafeteria plans accordingly in the meantime. If the employer does not implement the optional indexing rule until a later year, the cafeteria plan must be amended by the last day of the applicable plan year.

Finally, while not related to cafeteria plans, the IRS stated in the relief notices that the exemption recently extended to high deductible health plans for COVID-19 testing and treatment and telehealth services may be applied retroactively to January 1, 2020.

If you have any questions about the optional relief issued by the IRS, or are interested in amending your cafeteria plans to provide for any of the optional relief, contact your Butzel Long attorney or the author of this alert.

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