

The IRS released Notice 2020-29 dealing with cafeteria plan elections and grace periods for health flexible spending arrangements (FSAs). The IRS also released Notice 2020-33, which increased the \$500 carryover amount for health FSAs.

## **Notice 2020-29**

### **Cafeteria Plan Midyear Election Changes**

A cafeteria plan sponsor may amend its cafeteria plan to permit employees to make the following prospective mid-year changes to their salary reduction elections:

- Make a new election to participate in employer-sponsored health coverage if the employee initially declined to elect such coverage;
- Revoke a previous election for employer-sponsored health insurance coverage and make a new election to enroll in other health coverage provided by the employer;
- Revoke a previous election for employer-sponsored health coverage provided that the employee attests in writing that the employee will be covered by other health coverage not provided by the employer;
- Revoke an election, make a new election, or increase or decrease an election to a health FSA and a dependent care flexible spending arrangement.

Employers are not required to provide these election changes and can determine which changes they will permit. The relief provided by this notice will apply retroactively to mid-year changes made after January 1, 2020 if they are consistent with the requirements of this notice.

### **Extended Grace Period**

Health FSAs may provide a grace period whereby unused amounts at the end of the year can be used to reimburse health expenses incurred in the 2-½ month period following the end of the year. Employers may amend their plans to allow employees to use the unused amounts in their Health FSA as of December 31, 2019 to pay for health expenses incurred before December 31, 2020 – thereby extending the grace period for a full year. The extension of time for incurring claims is available both to cafeteria plans that have a grace period and plans that provide for a carryover, notwithstanding Notice 2013-71, which otherwise continues in effect and provides that health FSAs can either adopt a grace period or provide for a carryover amount but cannot have both.

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This extension of the grace period may be problematic to employees making contributions to an HSA in 2020, since the extension will mean that those with a balance as of the extension date are considered to have health coverage below the HSA-compatible HDHP amount. This is because unused 2019 FSA amounts can be used to pay for health care expenses below the deductible in 2020, thus making them ineligible to make HSA contributions.

A similar grace period extension can be made available for dependent care assistance FSAs.

## **Plan Amendments**

Plan amendments that allow for these midyear cafeteria plan election changes and the extension of the grace period must be adopted before December 31, 2021, provided that the employer operates the plan in accordance with the rules of the Notice and plan participants must be informed of the changes.

## **Notice 2020-33**

### **Health FSA Carryover**

Under prior guidance, a Health FSA could provide that unused amounts at the end of the year could be carried over to the following plan year. The limit on the carryover amount was \$500. This notice provides that the \$500 carryover amount is to be indexed for inflation, meaning that the carryover amount in 2020 will be \$550. A plan amendment to effectuate this change must be adopted by December 31, 2021 and can be retroactive to the 2020 plan year.

**Employers are not required to provide these election or grace period changes. If you would like to discuss these options further or would like to amend your FSA or HRA plans, please email MedBen Director of Administration Sharon A. Mills at [smills@medben.com](mailto:smills@medben.com) or 800-423-3151 ext 438.**