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HEALTH CARE REFORM

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IRS MODIFIES CAFETERIA PLAN RULES TO ALLOW ELIGIBLE EMPLOYEES TO PURCHASE COVERAGE ON THE HEALTH INSURANCE MARKETPLACE

On September 18, 2014, the Internal Revenue Service (IRS) released Notice 2014-55, which expanded the current rules regarding when an employee can modify or revoke his or her election to contribute to a cafeteria plan.

Cafeteria Plans

Sponsored by employers, cafeteria plans provide their employees with an opportunity to elect to pay for health insurance premiums and certain other qualified benefits on a pretax basis. In order to take advantage of this opportunity, the employee must make an advance election to reduce a portion of his or her salary that will be used for health insurance premiums and other qualified benefits. Regulations issued by the IRS provide that the election must be irrevocable during the year except to the extent that the employee has experienced a permitted election change event during the year and the employer's plan permits the employee to change his or her election under those circumstances. Under the IRS regulations, permitted election change events include a change in marital status, change in number of dependents or a change in employment status that results in a change in plan eligibility. In addition, the change to the employee's election must be consistent with the permitted election change event.

Health Insurance Purchased Through a Marketplace

Under the Affordable Care Act (ACA), states may establish a Health Insurance Marketplace (Marketplace) where individuals can purchase health insurance coverage. If the state does not establish a Marketplace, the federal government will provide a Marketplace. Low- and

moderate-income individuals may be eligible for tax credits and other subsidies for insurance purchased through a Marketplace if:

- the individual is not eligible for minimum essential coverage from his or her employer,
- the coverage offered by the employer is unaffordable, or
- the coverage offered by the employer does not provide minimum value.

These subsidies can be very helpful in making insurance coverage more affordable for low- and moderate-income individuals. Individuals who enroll in employer-sponsored minimum essential coverage are not eligible to purchase insurance under a Marketplace and receive the subsidies. Employers and employees cannot use a cafeteria plan to purchase health coverage under an Exchange, except through a Small Business Health Options Program (SHOP) Marketplace.

Modification of the Cafeteria Plan Change in Status Rules

Notice 2014-55 added two additional situations where an employee could revoke his or her cafeteria plan election prospectively in order to receive subsidized health care coverage under a Marketplace. Neither of the new permitted election change events will apply to allow a change to an employee's flexible spending arrangement (FSA) election.



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The first situation is where an employee's employment status has changed so that the employee is reasonably expected to average less than 30 hours of service per week (meaning that the employee is not a full-time employee under the ACA), even if the reduction does not result in the employee ceasing to be eligible for coverage under the employer's group health plan. In addition, the revocation of the election must correspond with the intended enrollment in other coverage no later than the first day of the second month following the month of the election change and the plan may rely on reasonable representations of the employee to support that fact. The second situation is where an employee wants to stop coverage under the employer's plan in order to, instead, purchase coverage through a Marketplace. This revocation will be allowed as long as the employee is eligible to enroll in coverage through a Marketplace during a special enrollment period or during the Marketplace's annual open enrollment period. In addition, this new coverage must be effective immediately after the

day the original coverage was revoked. The employer may rely on the reasonable representations of the employee to support these facts.

Decisions for Employers

The IRS stated that these changes would be effective immediately. However, employers do not have to allow employees to change their cafeteria plan elections during the year. If the employer does want to give employees the ability to change their cafeteria plan elections, the IRS reminded employers that their cafeteria plan document may need to be amended to permit for the additional mid-year election changes. The amendment must be adopted on or before the last day of the plan year in which the election changes are allowed; however, these election changes are permitted in the 2014 plan year as long as the amendment is made by the end of the plan year that begins on or after January 1, 2015. The amendment can be made retroactive; however, the employer must notify participants of the plan amendment and its effective date.

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