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IRS Allows Midyear Changes to Health Coverage and Dependent Care Accounts in Response to COVID-19 Disruptions

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In response to the coronavirus pandemic (COVID-19) the IRS has issued Notice 2020-29. This notice alters the normal rules of a Section 125 cafeteria plan. It provides flexibility with respect to mid-year elections to various "flexible" spending account plans for healthcare or childcare expenses.

Employees who take advantage of tax advantaged "flexible" spending accounts for healthcare or childcare may currently find these accounts over or under funded. The problem is that participants are required to choose how much money to put into these accounts in advance, anticipating how much they will need to cover eligible expenses. The coronavirus has dramatically altered those calculations for many people.

This is where the IRS's new guidance comes in. Under the new notice, employers have discretion to allow for certain mid-year elections and plan changes. All of these plan changes are prospective only. The five plan changes permitted at the employer's discretion are:

1. Electing for employer-sponsored health coverage on a prospective basis if coverage was initially declined;
2. Changing employer-sponsored health coverage, (e.g move from one plan to another);
3. Revoking employer-sponsored health coverage, provided the employee attests in writing they are enrolling in coverage elsewhere;
4. Revoking, making, or altering an election regarding a healthcare FSA; and
5. Revoking, making, or altering an election regarding a dependent care account.

Some flexible spending plans also have a grace period allowing employees to apply



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unused amounts to eligible benefits in the next calendar year. The IRS's notice extends that claims grace period for any unused amounts to December 31, 2020.

An employer that decides to amend one or more of its flexible spending plans, or to increase the carryover amounts permitted consistent with Notice 2020-33, must adopt a plan amendment. The amendment may be adopted on or before December 31, 2021 and may be effective retroactively to January 1, 2020.

Ultimately, employees whose employers choose to offer these mid-year adjustments will have the ability to alter their elections, and to contribute more pre-tax dollars if they are experiencing higher than anticipated expenses or to lower contributions if they will no longer need the funds for specific costs.

If you need assistance with any such matters please reach out to Rich May attorneys J. Allen Holland or Nathaniel Donoghue for assistance.

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