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New Status Changes Allowed for Cafeteria Plans

New [Notice 2014-55](#) permits status change elections in two situations where they were not previously allowed. The new status change opportunities are intended to accommodate coverage in the Affordable Care Act (ACA) Exchanges. The permitted midyear change events are expanded to allow employers who offer cafeteria plans to amend their plans to permit employees to revoke health plan elections mid-year to enroll in Exchange coverage, and to allow employees to revoke their health plan elections if work hours are reduced to below 30 hours per week.

Background: In most cases, a participant may not change his or her elections under a cafeteria plan during the period of coverage (usually the plan year). However, there are limited exceptions for certain changes in status, if permitted by the plan and if the election change is consistent with the change in status. Under the Internal Revenue Code section 125, an employer may allow an employee to change his or her pre-tax cafeteria plan election for healthcare if (1) the employee's status changes from full time to part time, and he or she loses coverage as a result of the change in status, or (2) the employee becomes eligible for special enrollment rights (for example, the employee becomes eligible for Medicaid or a child becomes eligible for the State Children's Health Insurance Program).

Under the new ACA measurement period rules, a change in an employee's status from full time to part time may not result in a loss of coverage if the employer uses a "look-back" methodology for determining if the employee is full time or part time, because the employer continues to offer the employee coverage during a "stability" period. Consequently, the employee would not be permitted to change his or her pre-tax cafeteria plan election under the existing rules.

Similarly, the opportunity to change elections is not available if the employee newly qualifies to enroll in a qualified health plan offered through an Exchange because that is not protected by special enrollment rights for an employer plan. Exchange rules provide for open enrollment periods, which for 2015 run from November 15, 2014 through February 15, 2015, and special enrollment rights that allow individuals to enroll in coverage outside of the open enrollment period. The special enrollment rules permit enrollment in an Exchange plan or a change from one Exchange plan to another following certain qualifying events like losing minimum essential coverage, gaining a dependent, becoming a US citizen or national, or moving permanent residences. While the cafeteria plan rules permit election changes that correspond with HIPAA special enrollment rights, such as a loss of health coverage, marriage, or birth/adoption of a child, the current rules do not permit a change of election that corresponds with these Exchange special enrollment rights.

The New Rules: In certain circumstances, it might be beneficial for an employee to waive employer coverage and choose to enroll in a qualified plan through an Exchange. Notice 2014-55 addresses cafeteria plan elections in two specific situations related to the availability of coverage through an Exchange. To allow for more flexibility in these situations, employers can now choose to allow an employee to revoke a pre-tax election for health plan coverage (other than a health flexible spending account) as follows.

- *Full Time to Part Time:* A full-time employee (expected to average at least 30 hours of service per week) experiences a status change so that he or she is reasonably expected to work part time (average less than 30 hours of service per week), but the change does not immediately result in the employee's loss of employer-provided coverage (because they are in a stability period). In this case, the employee may voluntarily drop the employer coverage as long as he or she represents that he or she (and any related individuals whose coverage is being dropped) will be enrolled in new "minimum essential coverage" no later than the first day of the second month following the date the employer's coverage is dropped. This new rule helps the "election lock" situation involving a measurement/stability period, and also allows an employee who experiences a reduction in hours from full- to part-time to drop his or her election under the cafeteria plan and enroll in the spouse's employer's plan (presuming the spouse's employer allows a corresponding change).
- *Seeking Exchange Coverage:* The employee (and any dependent) is eligible to enroll in an Exchange plan (either during a special or open enrollment period) and would like to cease coverage under the employer's group health plan and purchase coverage through the Exchange plan, without having a period of either duplicate coverage or no coverage. In this case, the employee may drop the employer coverage as long as he or she represents that he or she (and any related individuals whose coverage is being dropped) will be enrolled in the qualified coverage no later than the day immediately following the loss of the employer coverage. This rule addresses the election lock issue for non-calendar year plans. If an employer uses the calendar year as the "stability" period, this rule generally will affect only employees who have a right to enroll in the Exchange during a special enrollment period for the Exchange, for example, someone who marries or has a child. This provision might also be used by employees participating in a calendar year plan who seek Exchange coverage during January through February 15.

A cafeteria plan may rely on the reasonable representation of an employee as to satisfaction of the above requirements.

Amendments: The guidance is effective on September 18, 2014. IRS intends to amend current regulations to reflect the new rules. To adopt either or both of these provisions, cafeteria plans must be amended by the last day of the plan year for which the change is effective (and the change can be effective as of the first day of the year), provided that the cafeteria plan operates in accordance with the guidance and the employer informs participants of the amendment. In addition, employers that want to adopt the amendments for a plan year that begins in 2014 may adopt the amendment on or before the last day of the plan year that begins in 2015. However, in no event may an election to revoke coverage on a retroactive basis be allowed.

Should you have questions about this or any aspect of healthcare reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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