

February 2023

Employee Benefits Compliance

Cafeteria Plan Mid-Year Election Change Rules

Cafeteria Plans must follow the general principle that participant elections are irrevocable for the period of coverage (generally for the plan year). However, the IRS has recognized certain exceptions to the irrevocability rule — often referred to as mid-year election changes.

Below is a table that shows the events giving rise to possible mid-year election changes. Note that a Cafeteria Plan may be drafted to prohibit or allow all or only a limited set of permissible mid-year elections changes. Therefore, the cafeteria plan may ultimately determine if an event allows a mid-year election change. Often the cafeteria plan document will contain catch-all language allowing all changes permitted under the cafeteria plan regulations but verify the cafeteria plan language when considering a mid-year election change. Note also that the election change rules are more liberally applied to dependent care assistance program (DCAP) elections whereas many of the election change rules do not apply at all to Health Flexible Spending Accounts (H-FSA).

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
CHANGE IN STATUS					
Change in Employee's Legal Marital Status					
Gain Spouse (marriage). Note: HIPAA special enrollment rights are separate and may also apply so please check both	Employee may enroll or increase election for newly eligible spouse and dependent children (under tag-along rule, preexisting dependents also may be enrolled), coverage option (e.g., HMO to PPO) change may be made; employee may revoke or decrease employee's or dependent's coverage only when such coverage becomes effective or is increased under the spouse's plan.	Same as previous column.	Employee may enroll or increase election for newly eligible spouse or dependents, or likely decrease election if employee or dependents become eligible under new spouse's health plan.	Employee may enroll or increase to accommodate newly eligible dependents or decrease or cease coverage if new spouse is not employed or makes a DCAP coverage election under spouse's plan.	Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
<p>Lose Spouse (divorce, legal separation, annulment, death of spouse) (see loss of dependent eligibility below for discussion of dependent eligibility loss following divorce, separation, etc.). Note: HIPAA special enrollment rights may also apply.</p>	<p>Employee may revoke election only for spouse; coverage option (e.g., HMO to PPO) change may be made. Employee may elect coverage for self or dependents who lose eligibility under spouse's plan if such individual loses eligibility as a result of the divorce, legal separation, annulment, or death (under tag-along rule, any dependents may be enrolled so long as at least one dependent has lost coverage under spouse's plan).</p>	<p>Same as previous column.</p>	<p>Employee may decrease election to reflect loss of spouse's eligibility. Employee may enroll or increase election where coverage is lost under spouse's health plan.</p>	<p>Employee may enroll or increase to accommodate newly eligible dependents (e.g., due to death of spouse) or cease coverage if eligibility is lost (e.g., due to dependent now residing with ex-spouse).</p>	<p>Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.</p>
Change in the Number of Employee's Dependents					
<p>Gain Dependent (birth, adoption). Note: HIPAA special enrollment rights may also apply.</p>	<p>Employee may enroll or increase coverage for newly eligible dependent (under tag-along rule, any other dependents who were not previously covered may also be enrolled); coverage option (e.g., HMO to PPO) change may be made. Employee may revoke or decrease employee's or dependent's coverage if employee or dependent becomes eligible under spouse's plan.</p>	<p>Same as previous column.</p>	<p>Same as previous column.</p>	<p>Employee may enroll or increase to accommodate newly eligible dependents (and any other dependents who were not previously covered, under tag-along rule).</p>	<p>Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.</p>

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
Lose Dependent	Employee may drop coverage only for the dependent who loses eligibility; coverage option (e.g., HMO to PPO) change may be made.	Same as previous column.	Employee may decrease or cease election for dependent who loses eligibility.	Employee may decrease election for dependent who loses eligibility.	Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.
Change in Employment Status of Employee, Spouse, or Dependent That Affects Eligibility					
Commencement of Employment by Employee, Spouse, or Dependent (or Other Change in Employment Status) That Triggers Eligibility					
Commencement of Employment by Employee or Other Change in Employment Status (e.g., PT to FT, hourly to salaried, etc.) Triggering Eligibility Under Component Plan	Provided that eligibility was gained for this coverage, employee may add coverage for employee, spouse, or dependents and coverage option (e.g., HMO to PPO) change may be made.	Same as previous column.	Same as previous column.	Same as previous column.	Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.
Commencement of Employment by Spouse or Dependent or Other Change in Employment Status Triggering Eligibility Under Spouse's or Dependent's Plan	Employee may revoke or decrease election under employee's, spouse's, or dependent's coverage if employee, spouse, or dependent is added to spouse's or dependent's plan; coverage option (e.g., HMO to PPO) change may be made.	Same as previous column.	Employee may decrease or cease election if they drop health coverage and enrolls in health coverage under spouse's or dependent's plan.	Employee may make or increase election to reflect new eligibility (e.g., if spouse previously did not work) and may revoke election for dependent who is added to spouse's plan.	Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
Termination of Employment by Employee, Spouse, or Dependent (or Other Change in Employment-Status) That Causes Loss of Eligibility					
Termination of Employee's Employment or Other Change in Employment Status (e.g., unpaid leave, FT to PT, strike, salaried to hourly, etc.) Resulting in a Loss of Eligibility	Employee may revoke or decrease election for employee, spouse, or dependent who loses eligibility under the plan. Coverage option change may be made.	Same as previous column.	Employee may revoke election to reflect loss of eligibility (note that under most health FSAs, employee loses coverage automatically).	Employee may revoke or decrease election to reflect loss of eligibility.	Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.
<ul style="list-style-type: none"> Termination and Rehire Within 30 Days 	Prior elections at termination are reinstated unless another event has occurred that allows a change.	Same as previous column.	Same as previous column.	Same as previous column.	Same as previous column.
<ul style="list-style-type: none"> Termination and Rehire After 30 Days 	Employee may make new elections.	Same as previous column.	Same as previous column.	Same as previous column.	Same as previous column.
Termination of Spouse's or Dependent's Employment (or other change in employment status resulting in a loss of eligibility under their employer's plan). Note: HIPAA special enrollment rights may also apply.	Employee may enroll or increase election for employee, spouse, or dependents who lose eligibility under spouse's or dependent's employer's plan. Also, coverage option (e.g., HMO to PPO) change may be made. In addition, other previously eligible dependents may also be enrolled under tag-along rule.	Same as previous column.	Employee may enroll or increase election to reflect loss of eligibility for health coverage.	Employee may enroll or increase election if spouse or dependent loses eligibility for DCAP. Employee may decrease or cease election to reflect loss of eligibility for coverage (e.g., if spouse stops working).	Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
Event Causing Employee's Dependent to Satisfy or Cease to Satisfy Eligibility Requirements					
Event by Which Dependent Satisfies Eligibility Requirements Under Employer's Plan (e.g., attaining a specified age)	Employee may enroll or increase election for newly eligible dependent. In addition, other previously eligible dependents may also be enrolled under tag-along rule; coverage option (e.g., HMO to PPO) change may be made.	Same as previous column.	Employee may increase election or enroll only if dependent gains eligibility under health FSA.	Employee may increase election or enroll to take into account expenses of affected dependent.	Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.
Event by Which Dependent Ceases to Satisfy Eligibility Requirements Under Employer's Plan (e.g., attaining a specified age)	Employee may decrease or revoke election only for affected dependent; coverage option (e.g., HMO to PPO) change may be made.	Same as previous column.	Employee may decrease or revoke election to take into account ineligibility of expenses of affected dependent, but only if eligibility is lost. If dependent remains a tax dependent and the health FSA provides that the dependent's expenses remain eligible for reimbursement, then the employee could increase health FSA election.	Employee may decrease or drop election to take into account expenses of affected dependent.	Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.
Change in Place of Residence of Employee, Spouse, or Dependent					
Move Triggers Eligibility	Employee may enroll or increase election for newly eligible employee, spouse, or dependent. Also, other previously eligible dependents may be enrolled under tag-along rule; coverage option (e.g., HMO to PPO) change may be made.	Same as previous column.	No change allowed, even if underlying health coverage change occurs.	N/A. DCAP eligibility is not generally affected by place of residence.	Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
Move Causes Loss of Eligibility (e.g., employee or dependent moves outside HMO service area) Note: HIPAA special enrollment rights may also apply.	Employee may revoke election or make new election if the change in residence affects the employee's, spouse's, or dependent's eligibility for coverage option.	Same as previous column.	No change allowed, even if underlying health coverage change occurs.	N/A. DCAP eligibility is not generally affected by place of residence.	Employee may enroll, increase, decrease, or cease coverage even when eligibility is not affected.
Change in Benefits Package Option					
Addition or Significant Improvement of Benefit Package Option	Eligible employees (whether currently participating or not) may revoke their existing election and elect the newly added (or newly improved) option. Though unclear, it appears that tag-along concepts may apply.	Same as previous column.	No change permitted.	Eligible employees (whether currently participating or not) may revoke their existing elections and elect the newly added (or newly improved) option.	Same as previous column.
COBRA					
COBRA Qualifying Events	Employee may increase pre-tax contributions under employer's plan for coverage if COBRA event (or similar state-law continuation coverage event) occurs with respect to the employee, spouse, or dependents (such as a loss of eligibility for regular coverage due to loss of dependent status or a reduction of hours, etc.) and, if applicable, the individual still qualifies as a tax dependent for	Same as previous column.	Same as previous column.	No change permitted.	No change permitted.

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
	health coverage purposes.				
Change in Coverage Under Other Employer Cafeteria Plan or Qualified Benefits Plan					
Other Employer Plan Increases Coverage	Employee may decrease or revoke election for employee, spouse, or dependents if employee, spouse, or dependents have elected or received corresponding increased coverage under other employer plan.	Same as previous column.	No change permitted.	Employee may decrease or revoke election for employee, spouse, or dependents if employee, spouse, or dependents have elected or received corresponding increased coverage under other employer plan.	Same as previous column.
Other Employer Plan Decreases or Ceases Coverage	Employee may enroll or increase election for employee, spouse, or dependents if employee, spouse, or dependents have elected or received corresponding decreased coverage under other employer plan. Though unclear, it appears that tag-along concepts may apply.	Same as previous column.	No change permitted.	Employee may enroll or increase election for employee, spouse, or dependents if employee, spouse, or dependents have elected or received corresponding decreased coverage under other employer plan.	Same as previous column.
Open Enrollment Under Other Employer Plan/Different Plan Year	Corresponding changes can be made under employer's plan.	Corresponding changes can be made under employer's plan.	No change permitted.	Corresponding changes can be made under employer's plan.	Corresponding changes can be made under employer's plan.
Medicare or Medicaid Entitlement					
Employee, Spouse, or Dependent Enrolled in Employer's Accident or Health Plan Becomes Entitled to Medicare or Medicaid (other than	Employee may elect to cancel or reduce coverage for employee, spouse, or dependent, as applicable.	Though not entirely clear, we believe that an employee should be able to drop dental or vision coverage. But there is an argument that an employee would be	Employee may decrease or revoke election under employer plan.	No change permitted.	No change permitted.

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
coverage solely for pediatric vaccines)		prohibited from dropping such coverages.			
Employee, Spouse, or Dependent Loses Eligibility for Medicare or Medicaid (other than coverage solely for pediatric vaccines). Note: In the event of a loss of coverage under Medicaid, HIPAA special enrollment rights may also apply	Employee may elect to commence or increase coverage for employee, spouse, or dependent, as applicable. While unclear, tag-along concepts might apply, allowing the employee to add coverage for family members as well.	Though not entirely clear, we believe that an employee should be able to commence or increase dental or vision coverage. But there is an argument that an employee would be prohibited from electing such coverages.	Employee may commence or increase election under employer plan.	No change permitted.	No change permitted.
Judgments, Decrees, or Orders					
Order That Requires Coverage for the Child Under Employee's Plan	Employee may change election to provide coverage for the child. Though unclear, it appears that tag-along concepts may apply.	Same as previous column.	Same as previous column.	No change permitted.	No change permitted.
Order That Requires Spouse, Former Spouse, or Other Individual to Provide Coverage for the Child	Employee may change election to cancel coverage for the child.	Same as previous column.	Same as previous column.	No change permitted.	No change permitted.
Change in the Cost of Coverage					
Cost Changes with Automatic Increase/Decrease in Elective Contributions (including employer-motivated changes and changes in employee contribution rates)	Plan may automatically increase or decrease (on a reasonable and consistent basis) affected employees' elective contributions under the plan, so long as the terms of the plan require	Same as previous column.	No change permitted.	Application is unclear. Presumably, plan may automatically increase or decrease (on a reasonable and consistent basis) affected employees' elective contributions under the plan, so long as the terms	Same as major medical column.

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
<p>Significant Cost Changes</p>	<p>employees to make such corresponding changes.</p> <p>Increase: Employee may increase election correspondingly or may revoke election and elect coverage under another benefit package option providing similar coverage. If no option providing similar coverage is available, employee may revoke election.</p> <p>Decrease: Employees may decrease election correspondingly or may elect coverage (even if had not participated before) with decreased cost and drop election for similar coverage option. Though unclear, it appears that tag-along concepts may apply.</p>	<p>Same as previous column.</p>	<p>No change permitted.</p>	<p>of the plan require employees to make such corresponding changes.</p> <p>Same as major medical column for significant cost increase, except no change can be made when the cost change is imposed by a dependent care provider who is a relative of the employee.</p>	<p>Same as major medical</p>
<p>Reduction of Hours</p>					
<p>Reduction of Hours (change in employment status of employee who was expected to average at least 30 hours of service per week, so that employee is expected to average less than 30 hours of service per week).</p>	<p>Employee may revoke election for self and any related individuals (even if reduction of hours does not result in loss of eligibility for plan), so long as employee and any related individuals ceasing coverage intend to enroll in another plan providing minimum essential coverage, with coverage effective no</p>	<p>In rare cases where plan provides minimum essential coverage, changes in previous column may be permitted; otherwise, no change permitted.</p>	<p>No change permitted.</p>	<p>No change permitted.</p>	<p>No change permitted.</p>

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
	later than first day of second month following month in which employer-provided coverage is revoked.				
Loss of Group Health Coverage (Governmental, Educational Institution)					
Loss of Group Health Coverage Sponsored by Governmental or Educational Institution. Note: In the event of a loss of CHIP coverage, HIPAA special enrollment rights may also apply.	Employee may enroll or increase election for employee, spouse, or dependent if employee, spouse, or dependent loses group health coverage sponsored by governmental or educational institution. Though the issue is unclear, tag-along concepts might apply, allowing the employee who loses individual coverage to add coverage for family members as well.	Same as previous column, although there is an argument that a consistency requirement would prohibit an employee from electing such coverages if only major medical coverage was lost (and not dental and vision coverage) under the governmental or educational institution's plan.	No change permitted.	No change permitted.	No change permitted.
Significant Curtailment of Coverage					
Significant Curtailment of Coverage (With or Without Loss of Coverage)	Without Loss of Coverage: Affected participant may revoke election for curtailed coverage and make new prospective election for coverage under another benefit package option that provides similar coverage. With Loss of Coverage: Affected participant may revoke election for	Same as previous column.	No change permitted.	Election change may apparently be made whenever there is a change in provider or a change in hours of dependent care. See previous discussion.	Same as Major Medical column.

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
	<p>curtailed coverage and make new prospective election for coverage under another benefit package option that provides similar coverage or drop coverage if no similar benefit package option is available.</p> <p>Though unclear, it appears that tag-along concepts may apply.</p>				
HIPAA Special Enrollment Rights Note that other permitted election change events may also apply when there is a HIPAA special enrollment event.					
Special Enrollment for Loss of Health Coverage	Employee may elect coverage for employee, spouse, or dependent who has lost other coverage; coverage option change (e.g., HMO to PPO) may be made. Though unclear, it appears that tag-along concepts may apply.	Generally, no election change permitted because the coverage is not subject to the HIPAA portability rules. In rare cases where plan is subject to HIPAA portability rules, then same as previous column.	No clear guidance, can allow for change.	No change permitted.	No change permitted.
Special Enrollment for Acquisition of New Dependent by Marriage, Birth, Adoption, or Placement for Adoption	Employee may elect coverage for employee, spouse, or dependent; coverage option change (e.g., HMO to PPO) may be made. Under the tag-along rule, election of coverage may also extend to previously eligible (but not yet enrolled) dependents.	Generally, no election change permitted because the coverage is not subject to the HIPAA portability rules. In rare cases where plan is subject to HIPAA portability rules, then same as previous column.	No clear guidance, can allow for change.	No change permitted.	No change permitted.
Special Enrollment for Loss of Medicaid or CHIP Coverage Note: There is a 60-day	Employee may elect coverage for employee or dependent who has lost Medicaid or CHIP	Generally, no election change permitted because the coverage is not subject to the HIPAA	No clear guidance, can allow for change.	No change permitted.	No change permitted.

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
special enrollment period for this event.	coverage; coverage option change (e.g., HMO to PPO) may be made. Though unclear, it appears that tag-along concepts may apply.	portability rules. In rare cases where plan is subject to HIPAA portability rules, then same as previous column.			
Special Enrollment Due to Eligibility for State Premium Assistance Subsidy From Medicaid or CHIP Note: There is a 60-day special enrollment period for this event.	Employee may elect coverage for employee or dependent who has become eligible for premium assistance subsidy from Medicaid or CHIP; coverage option change (e.g., HMO to PPO) may be made. Though unclear, it appears that tag-along concepts may apply.	Generally, no election change permitted because the coverage is not subject to the HIPAA portability rules. In rare cases where plan is subject to HIPAA portability rules, then same as previous column.	Premium assistance subsidy does not apply.	No change permitted.	No change permitted.
Exchange Enrollment					
Exchange Enrollment (employee is eligible to enroll in Exchange coverage during an Exchange special or open enrollment period):	Employee may revoke election for self and any related individuals, so long as the revocation corresponds to intended enrollment of employee (and any related individuals ceasing coverage) in Exchange coverage that is effective no later than the day after the last day of employer-provided coverage.	No change permitted where coverage is an excepted benefit. In rare cases where plan provides minimum essential coverage, changes in previous column may be permitted.	No change permitted.	No change permitted.	No change permitted.
Family Member Exchange Enrollment (employee's family member is eligible to enroll in Exchange coverage during an	Employee may revoke election for that family member, so long as the revocation corresponds to intended enrollment of the family member in	No change permitted where coverage is an excepted benefit. In rare cases where plan provides minimum essential coverage,	No change permitted.	No change permitted.	No change permitted.

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
Exchange special or open enrollment period)	Exchange coverage that is effective no later than the day after the last day of the family member's employer-provided coverage.	changes in previous column may be permitted.			
FMLA Leaves of Absence					
Employee's Commencement of FMLA Leave	Employee can make same election changes as employee on non-FMLA leave. In addition, an employer must allow an employee on unpaid FMLA leave either to revoke coverage or to continue coverage but allow employee to discontinue payment of his or her share of the contribution during the leave (the employer may recover the employee's share of contributions when the employee returns to work). FMLA also allows an employer to require that employees on paid FMLA leave continue coverage if employees on non-FMLA paid leave are required to continue coverage.	Same as previous column.	Same as previous column.	Employee may revoke election and make another election as provided under FMLA.	Same as previous column.
Employee's Return from FMLA Leave	Employee may make a new election if coverage terminated while on FMLA leave. In addition, an employer may require an employee to be reinstated in his or her election upon return from	Same as previous column.	Same as previous column. Upon return, employee whose coverage has lapsed has the right to resume coverage at prior coverage level (and make up unpaid contributions	Employee may make a new election if coverage terminated while on FMLA leave. In addition, an employer may require an employee to be reinstated in his or her election upon return from	Same as previous column.

Event	Major Medical	Dental and Vision	Health FSA	DCAP	Employee Group Term Life, AD&D, and Disability Coverage
	leave if employees who return from a non-FMLA leave are required to be reinstated in their elections.		or at a level reduced pro rata for the missed contributions. In either case there is no coverage for claims incurred while the coverage was not in force.	leave if employees who return from non-FMLA leave are required to be reinstated in their elections. [‡]	
Health Savings Account (HSA)					
Pre-Tax HSA Contributions May Be Changed Monthly (No event needed)	No change.	No change.	No change.	No change.	No change.

Note. The cafeteria plan and the rules related to the cafeteria plan are distinct from the underlying medical plan and other benefit offerings. As an initial matter, the mid-year change has to be permissible on the underlying plan, usually the major medical plan. For example, in order for an individual to add coverage or add a dependent to the plan mid-year, the underlying medical plan must allow that change. The only changes a major medical plan is required to permit are those associated with HIPAA special enrollment rights. Other mid-year changes are generally optional for the plan. Be sure to verify that the underlying plan allows the requested change. If it does, then evaluate the cafeteria plan rules to determine if an associated mid-year election change is permissible.

Timing Issues. All mid-year election changes, with exception of HIPAA special enrollment rights, must be made on a prospective basis subject to the consistency rule. The consistency rule generally provides that the request change must make sense in light of the event that allows a mid-year election change. The deadlines by which an individual must notify the plan of an event that justifies a mid-year election change is a matter of plan design. Many plans require that such change requests be made within 30 days, but a plan can allow for a longer period of time. There are special rules for new hires and newborns.

The term "qualified benefits" used below refers to the benefits available for pre-tax payment/funding under the cafeteria plan.

FAQ

HIPAA Special Enrollment

- 1. Our company offers an HMO, PPO, and an HDHP under our group health and welfare plan. An employee is enrolled in self-only coverage under the HDHP, but just had a baby and wants more comprehensive coverage for her family. Do we have to allow her to switch medical plan options? Can she add her spouse even though they were not previously enrolled in the plan?**

Yes. She can change her election and she can switch from the HDHP to another medical plan option. This event (employee acquires a new dependent by birth) is a status change that also creates a HIPAA special enrollment right. She can also add her spouse and new baby. Coverage for the baby must be retroactive to the date of birth. This is the one occasion where retroactive election changes are specifically permitted.

Note that if the employee has other dependent children who are not enrolled, the plan may, but is not required to, allow them to enroll along with the new child. The employee can change her cafeteria plan election to cover the additional dependents if the plan allows.

Status Change Events

- 2. An employee is transferred to an office in a different state. Can he make any mid-year election changes?**

Yes — under certain circumstances. The change in status rules allow mid-year election changes when a change in residence affects an employee's (or dependents') eligibility for coverage or ability to access care. This is most often the case with HMO coverage where an employee moves out of or into the service area. As with all mid-year election changes, any change must be consistent with the event in question.

Cost and Coverage Rules

- 3. What if the plan increases the premium in the middle of the plan year?**

Plans are allowed to automatically increase (or reduce) employee contributions to reflect small mid-year cost changes. If the cost change is significant, employees might be permitted to change their elections under the guidelines set forth in question 6 below.

- 4. What is a "significant cost change" that would allow an employee to change plans or drop coverage?**

There is no direct guidance on what makes a cost change significant. The IRS provides some examples of significant cost changes but also warns they are not to be used as safe harbors. Plan administrators must make decisions based on the facts and circumstances. The percentage dollar increase and actual dollar increase can both be taken into account. For example, a 50% increase to a \$5/month dental premium may not be significant, but a 15% increase could be significant to a plan with pricey premiums. A significant cost change result from employer action, such as reducing employer contributions, or from employee action such as switching to part-time where employer pays a smaller portion of premiums. Note, however, where an employee's pay decreases, if the employer contribution remains the same, the employee cannot make an election change under the cost and coverage rules. See question 6.

- 5. When looking at whether an employee can change an election for a significant cost change, the rules allow a change to other "similar coverage" or, if that's not available, a drop in coverage. What is "similar coverage" for these purposes?**

The definition is: "Coverage for the same category of benefits for the same individuals (e.g., family to family or single to single). For example, two plans that provide coverage for major medical are considered to be similar coverage as long as coverage extends to the same people (i.e., employee plus spouse, or family coverage.) Note there is no cost component to the definition of similar coverage. If the employer offers "similar coverage", regardless

of the cost, the employee cannot drop coverage altogether. In addition, another employer's plan can have similar coverage so an employee for whom the cost of coverage increased significantly could enroll in a spouse's employer plan if that plan provided similar coverage.

6. What if the employee goes from full-time to part-time, the employer contribution toward the premium remained the same, but the employee can no longer afford the premium?

A change in financial circumstance is not itself a permissible mid-year election change event. This is true even in cases of financial hardship. However, the employee may be allowed to drop coverage under the new election change rule for a reduction in hours to below 30 per week, even if the change in status doesn't impact plan eligibility, as long as the employee and other dependents who lose coverage intend to enroll in other MEC.

Administration

7. What if the plan or participant makes an election mistake?

Informal comments by the IRS suggest that mistaken elections can be corrected if there is clear and convincing evidence a mistake has been made. In evaluating mistaken election situations, plan administrators can make determinations on a case-by-case basis, considering the facts and circumstances of each case. Given the lack of clarity in the regulations, plans will have to use judgment in these situations and apply a reasonable person standard to the facts and circumstances. By way of example, where an individual elected a DCAP even though they have no children, the plan should permit the change to remedy the mistaken election.

8. What proof does the plan administrator need in order to allow a mid-year election change?

Employers may generally rely on an employee's certification and that facts and circumstances of a purported event permit a mid-year election change (if the requested change is consistent with the event). In some cases, it may be prudent to gather documentary evidence supporting an election change request (for example, in the case of a mistaken election, a description of how the error occurred and why a correction was allowed). Employers are not required by law to collect additional documentation for verification, however some employers choose to require it.

All requests for mid-year changes should be documented and retained for at least five years. This can be done electronically pursuant to certain IRS requirements that ensure the security of the data.

9. An employee narrowly missed the plan's window to make a mid-year election change, can the change still be allowed?

Plans are allowed to set their own time limits for requesting mid-year election changes. Plan documents should specifically note how long a participant has to notify the plan of an event giving rise to a possible mid-year election change. When evaluating mid-year election change requests, the plan administrator should always adhere to the provisions of the plan document. As set forth in the introduction, if a plan prefers a broader time-line, it should consider allowing participants more than the standard 30 days generally provided in cafeteria plan documents prepared by a TPA.

Coverage Under Another Employer Plan

10. An employee wants to drop his existing coverage and join a spouse's plan, but the spouse's open enrollment period is a couple months after ours. Can the employee make an election change to switch to the spouse's plan or should they not enroll and go without coverage for two months?

A change in coverage under another employer plan is a permitted mid-year election change event. The employee can make a pre-tax election to pay for employer-sponsored coverage then change the election (drop coverage) when enrolling in the spouse's plan. This avoids "election lock." Without the "election lock" rule, employees could never change to a spouse's plan if the spouse's plan had a different plan year without paying for dual coverage or going uninsured for some period of time.

Health Flexible Spending Accounts and Election Changes

11. If an employee has a mid-year election change event, can they change the amount of their H-FSA election?

In general, H-FSA election changes are only permitted in the following circumstances:

- Change in status
- COBRA qualifying event
- Judgment, decree, or court order
- Medicare/Medicaid entitlement
- FMLA

Medicare

12. An employee is becoming eligible for Medicare this year. Can they change their elections when that occurs or will they have to maintain dual coverage until the next open enrollment?

The regulations allow an employee to make a mid-year election change to drop the employer plan upon entitlement to (meaning enrollment in) Medicare or Medicaid.

FMLA

13. How does a plan administrator treat employees who take FMLA leave?

FMLA leave allows an employee to either revoke or continue health coverage. If an employee elects to continue health coverage, employee contributions can be prepaid, "pay-as-you-go," or paid after returning from leave. If an employee opts to discontinue coverage (or doesn't pay premiums, depending on the arrangement), the employee upon returning from leave still has a right to be reinstated in the plan at the same terms as when leave began.

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