Employee Benefits Report

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Flexible Benefits January 2022 Volume 20 • Number 1

Pre-Tax Flexible Benefits – The Pros and Cons of Cafeteria Plans

A cafeteria plan, also known as a Section 125 plan, is a way for employers to provide multiple benefits while lowering taxes for themselves and their employees.

While more choice is always welcome, there are some drawbacks to cafeteria plans. Here's what you should know if you're considering offering this benefit.

Background

A cafeteria plan sometimes is referred to as a flexible benefits plan because it allows employees to choose from a variety of qualified benefits, which are generally not included in gross income. Em-

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This Just In …

Two new pharmacy benefit management companies have decided to enter the market, promising to facilitate greater drug price transparency: EmsanaRx and the Mark Cuban Cost Plus Drug Company.

Pharmacy benefit managers (PBMs) work with insurance companies, pharmacies and manufacturers to negotiate the lowest drug costs for their members. Drug Channels Institute estimates that in 2020 about 77 percent of all prescription claims ran through the top three PBMs — CVS Health, the Express Scripts business of Cigna, and the OptumRx business of UnitedHealth Group.

EmsanaRx is a nonprofit coalition of almost 40 companies

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ployees decide how much of their gross income they want to use for benefits before any taxes are calculated and deducted.

Qualified benefits include:

- Accident and health benefits
- Adoption assistance
- Dependent care assistance
- Group-term life insurance coverage not exceeding $50,000
- Health savings accounts including distributions to pay for long-term care services

Employer-provided benefits that are not included in gross income and are not allowed in a cafeteria plan are called nonqualified benefits. Nonqualified benefits include:

- Scholarships
- Employer-provided meals and lodging
- Educational assistance
- Fringe benefits.

There are several types of cafeteria plans:

- **Full flex plans:** Employers make contributions for all plan-eligible employees, which they can use to buy various benefits. For benefits that employer contributions don't cover, employees can make pre-tax contributions.
- **Premium-only plans (POPs):** Employees can choose between receiving their full salary in cash or use a share of it to pay group insurance policy premiums on a pretax basis.
- **Simple cafeteria plans:** In exchange for contributing to each eligible employee's benefits, employers with 100 or fewer employees can get safe harbor from certain plan nondiscrimination requirements.
- **Flexible spending arrangements (FSAs):** These allow employees to make contributions toward health care and dependent care expenses on a pretax basis.

Pros

Here are a few of the reasons employers and employees like cafeteria plans.

- **Customization:** The cafeteria plan approach addresses a wide variety of needs for employees in different life situations. Instead of one-size-fits-all benefits, employees can choose the benefits that fit their unique requirements. When their needs change, they have an opportunity to adjust their selections each year. Many plans also allow employees to make changes when there is a significant life event, such as a marriage, divorce, or the birth of a child.
- **Financial considerations:** As mentioned, employers and employees pay less tax. In particular, employers don't pay FUTA or FICA taxes on the salary reduction amount. Similarly, employees don't pay the federal income tax, FICA, or state and local income taxes on the reduction — though there are exceptions in certain jurisdictions.

Cons

Despite the advantages, cafeteria plans have some negative features.

planning to offer pharmacy benefit management services to employers. EnsanaRx, which includes retailers such as Walmart and Costco, is the PBM unit of the Purchaser Business Group on Health (PBGH) coalition. Emsana Health plans to serve as an "innovation studio" which will develop new products and solutions with input from PBGH's employer members.

The goal of the Mark Cuban Cost Plus Drug Company is to sell generic drugs at a transparent, fixed rate, and to unite manufacturing, distribution and pharmacy services under one roof. The PBM plans to be running by 2023, according to an article in the *Wall Street Journal*.

- **Finances:** Unless specified in the plan documents funds placed into a cafeteria plan by an employee that are not used are forfeited. The plan documents can, however, allow up to $570 to roll over. Without the rollover option in a plan, for instance, if an employee allocates $2,000 for medical expenses but only spends $1,500, the employee loses the $500 worth of benefits. Another financial situation to consider is when an employee, who can choose from both nontaxable and taxable benefits under cafeteria plans, chooses a taxable benefit such as cash. The employee will incur a tax liability for the tax year when the cash benefit was received.
- **Strict requirements:** Most flexible spending accounts require employees to pay for

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their care expenses up front and receive reimbursement later, after it can be proved their expenses have met the plan's criteria. Some procedures, like an MRI, may require prior approval. Without such approval an employee might bear the entire cost without reimbursement.

- **Limitations:** Employers only can offer cafeteria plan benefits to employees. Full-time independent contractors, freelancers, gig workers, and other essential staff may get excluded from this benefits package.
- **Administration:** There is usually a setup fee, and although offset by the cost savings, the initial cost and additional infrastructure expenses may be more than some small businesses can manage. Plus, cafeteria plans can be complex and time-consuming to administer.

How to Avoid the Legal Pitfalls of Telecommuting

Are you an employer who started letting employees work from home during the COVID-19 pandemic?

Or maybe telecommuting has been part of your work environment even before the pandemic. In any case, here are some things to be aware of to be sure you're not opening yourself to litigation.

As a first step, the best thing you can do to avoid potential legal issues is to have a formal company policy and a signed agreement that correlates to that policy. Both documents should address any potential problems that could arise when an employee works from home or in a public space away from the office.

Here are some of the issues that should be addressed in the policy and the agreement.

Privacy/Confidentiality

The company policy should draw attention to the fact that telecommuters who use their home computer must realize that an employer has the right to monitor or inspect an employee's computer — even if the employee is using a personal computer. The agreement should include a nondisclosure agreement requiring employees to promise not to share company information while allowing the employer to retrieve files at will.

Security

To ensure that hackers can't access company information from an employee's computer, employees should operate their computer from a secure server or a virtual private network. As an extra layer of protection, employees should also use encryption, passwords and network firewalls.

Timekeeping

The telecommuting agreement should list the employee's hours and require them to keep meticulous records or use an electronic tracking system. In situations where work hours fluctuate based on business needs, there should be an agreement specifying how many hours the employee will be paid each week —regardless of the hours they work.

Even with salaried employees exempt from overtime under the federal Fair Labor Standards Act, establishing normal work hours, including when employees are expected to be available by phone or email, usually creates a more productive, dependable work routine.

Accommodations

The Occupational Safety and Health Act (OSHA) mandates that employers maintain a safe workplace for employees by preventing foreseeable hazards — even when employee works from home. While an employer generally does not have the right to go into an employee's home, an employer can make it a part of the telecommuting agreement that to ensure compliance with OSHA standards inspection of the employee's home may be permitted.

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Workplace Safety

Most courts consider home workplace locations an extension of the office. That means that an employer could be held liable if an employee is injured while working at home. Employers are encouraged to create a specific policy regarding work-related injuries that may occur in an employee's home. The policy or agreement should designate a specific area of the employee's house where work will be performed — preferably apart from the rest of the house to ensure that injuries occur only in the designated areas.

Discrimination

Your policy should indicate which group or groups are eligible to work from home, and under what circumstances. Make sure that your policy doesn't apply to groups that could be identified in a manner suggesting discriminatory intent, however, such as only women or only young employees.

Class Action Considerations

Ideally, each telecommuting employee should have a separate, individualized agreement. Individualized agreements protect employers from class action lawsuits. For instance, in a situation where an employee brings a suit alleging the employer failed to properly record work hours, if all employees signed the same agreement, the suit could be applied to all non-exempt telecommuting employees.

Zoning And Taxes

Some local ordinances restrict the ability of individuals to conduct business in their homes, and in some cases, permit local governments to levy taxes. The telecommuting agreement should stress that it is the employee's responsibility to ensure compliance with local zoning and regulations.

It is in your firm's power, of course, to discontinue telecommunicating when you believe the arrangement no longer meets your company's needs and your agreement should state so. It's in everyone's best interest, though, for you to provide employees with at least a 30 days' notice, especially to accommodate childcare issues and other problems that may arise from the change.

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What to Expect for Retirement Savings Plans in 2022

With a new year often comes new rules. Here's what thefederal government has planned for retirement savings plans in 2022.

401(k) Contributions Raised

The Internal Revenue Service (IRS) limits contributions to 401(k), IRA, Roth IRA and other retirement savings plans to prevent highly paid employees from receiving more benefits than the average employee. Contribution limits vary by the type of plan, the plan participant's age and in some cases by how much someone earns.

For 2022, the IRS increased the amount employees can contribute to 401(k) and 403(b) plans, to most 457 plans, and to the federal government's Thrift Saving's Plan to $20,500. This is a $1,000 increase over the contribution limits in 2020 and 2021. Employees 50 and older can make a catch-up contribution of $6,500 — the same as last year.

The contribution limit for a SIMPLE IRA was also increased. A SIMPLE IRA is a retirement plan designed for small businesses with 100 or fewer employees. Employees can contribute an extra $500 in 2022 for a total of $14,000. The catch-up contribution limit for those 50 and older remains the same at $3,000.

However, for employees with individual retirement accounts, the IRA contribution limits remain unchanged, as they have since 2019. Traditional or Roth IRA contribution limits are $6,000. Catch-up contributions remain $1,000.

Retirement Age Higher

If you have employees who are counting the days till retirement, they will have to wait a little longer if they want to collect full Social Security payments during retirement.

Since the time when President Roosevelt signed the Social Security program into law in 1935, the age someone must reach to collect full benefits has been raised 12 times. The latest increase in full retirement age took effect this year. The full retirement age for those born in 1960 or later is now 67. (Retirement ages for those born earlier varies between 65 for individuals born in 1937 and prior and 66 and 10 months for those born in 1959.)

The Rich Pay More

The amount of FICA taxes taken from employees' paychecks for Social Security taxes have a wage-based limit and are adjusted annually to reflect inflation. The maximum annual earnings that are subject to Social Security withholding in 2022 are $147,000 per employee.

There's some controversy about the cap. A large number of wage earners earn less than the wage base limit, which means they pay tax on every dollar of their income. At the same time, the highest earners pay tax on only part of the money they earn. There is an assumption that lower wage-earners are the prime beneficiaries of Social Security and that those who earn more won't need it — which was part of the original rationale for instituting the income cap. Critics of the cap believe that lifting the cap would result in a significant amount of additional revenue that could help cover the shortfall Social Security soon will face.

Last Year to Report Coronavirus-Related Distributions

In 2020 , the pressure put on on the economy by the pandemic meant that money was tight for many people. To help, the IRS allowed qualified individuals to take distributions of up to $100,000 from eligible retirement plans without paying an early withdrawal penalty. Anyone who did this could either report those distributions as income in one lump sum in the year they received the funds or spread the distribution out evenly over three years ending in 2022.

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No Single Benefit Interests Every Age Group

Look around a typical workplace and you're bound to see four generations of employees – Baby Boomers, Generation Xers, Millennials and Generation Zers. With that much diversity, it stands to reason that each generation needs different benefits. The current worker drought also means addressing employees' needs to be more important, especially as employees become more particular about what jobs they think will give financial and emotional security.

A study conducted by LIMRA and Ernst & Young found that employees across all generations view workplace insurance benefits as more valuable today than before the COVID-19 pandemic. Those most interested in benefits were Millennials (47 percent), followed by Gen Xers (33 percent)m Gen Z (29 percent) and Baby Boomers (24 percent).

So what do they each want in benefits? According to human resources experts, it depends on where each age group is in their careers.

Generation Zers, born between 1997-2012, are just starting their careers, so professional development, such as mentorship and paid training programs, are highly prized. Health insurance and 401k plans also are valued.

Millennials, born between 1985-1996, are still early in their careers too, so training and career development opportunities are important. They also appreciate team building courses; social and offsite events; and flexible work hours.

Generation Xers, born in the mid-1960s to the mid-80s, are the most interested in health care benefits such as major medical, dental, vision and life insurance. They are also thinking about retirement accounts and student loan assistance for their children. Tax-advantaged accounts such as Flexible Spending Accounts (FSA), Health Reimbursement Arrangements and Health Savings Accounts (HSA), paired with a High Deductible Health Plan, also are popular.

Baby Boomers, born between 1945 and 1965, favor traditional benefits: medical, dental, vision, life insurance and 401(k) accounts. They also appreciate tax-advantaged health care accounts, like FSAs and HSAs.