



INFORMATION OF IMPORTANCE

Date: October 19, 2007
To: Our Valued Clients and Friends
From: Anita Drew, VP Account Management
Subject: New Proposed Cafeteria Plan Rules

The IRS issued new proposed cafeteria plan rules August 6, 2007. While employers may rely on the rules for guidance immediately, the IRS is accepting public comment through November 5, 2007 and will hold a hearing on the rules November 15, 2007. The rules are proposed to become final for plan years beginning on or after January 1, 2009.

Noteworthy provisions of the new proposed rules include:

- The simplification and clarification of nondiscrimination testing requirements; nondiscrimination testing must be performed annually before the end of each plan year.
- Individuals may pay for COBRA premiums for coverage under the current or a former employer's plan on a salary-reduction basis. (For example, an employee goes from full-time to part-time and is no longer eligible for coverage but still receives pay from his/her employer; a covered employee's child reaches the dependent age limitation, etc.)
- Individuals may be given the choice to receive severance pay or use the money to pay COBRA premiums.
- Salary reduction of COBRA premiums for a former employer's plans could be allowed during the time a new hire is in a waiting period to become eligible for the new employer's sponsored group health plan. The salary reduction for coverage would be reimbursed to the employee once the COBRA premium is adequately substantiated each month. It is important to distinguish that this is a "premium" reimbursement through a separate "premium reimbursement account" and not reimbursed through a medical FSA, which is clearly against the IRS rules.
- Plans must be written and contain certain specified requirements, whether the plan allows for pre-tax Premium Conversion Only, Flexible Spending Accounts, or a combination of both.
- Plans run for twelve consecutive months that may start from any date within the year (such as June 15th to the following June 15th).

- Two-year lock-ins of premiums for dental and vision coverage do not violate the deferred compensation prohibition, nor do carry-forward of credits against deductibles, progressive payments for diagnosed conditions, or payment through salary reduction in the last month of a plan year to pay for coverage for the first month of the next plan year.
- Mandatory cafeteria plans, or making pre-tax premium conversion for health coverages mandatory, is not allowed. Participants must be given the choice of pre-tax coverage or regular compensation. However, participants may be automatically enrolled if given the opportunity to opt out of pre-tax premium payments. In addition, elections may be carried over from year to year, with the opportunity at any anniversary to opt out of pre-tax payments.

If you have any questions, please feel free to contact us by phone (913) 647-1580 or by e-mail, rdutton@rjdutton.com

Thank you for the opportunity to be of service.