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LeTourneau was one of the first people in the country to earn the Advanced Certification in Flexible Compensation Instruction designation sponsored by the Employers Council on Flexible Compensation. She is a certified trainer in the ACFCI program.

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The Benefits Brief...

Relaxing Plan Changes For Exchanges

The Affordable Care Act (ACA) had to take a detour for flexible benefit plans. Without a little tweaking of the change in election rules for cafeteria plans, some employers and employees will not be able to take advantage of the health insurance exchanges starting January 1, 2014.

Beginning in October 2013, individuals will have the opportunity to enroll in state exchanges throughout the country for coverage starting January 1, 2014. These dates coincide with a large number of employers' benefit plans that offer health insurance coverage. Their health plan years end December 31, and employees may enroll at an exchange for the 2014 plan year. However, because of the change of election rules for cafeteria plans, employers who run their benefits on a fiscal plan year rather than a calendar year may have difficulty.

When participants enroll in a cafeteria plan—even just for pretaxing health insurance premiums—the election is irrevocable unless they have a qualified reason to change their election. The availability of health coverage through an exchange does not constitute a change in status. Thus, participants whose cafeteria plans do not end on December 31 would be unable to change their salary reduction elections in the middle of their cafeteria plan year to purchase coverage through an exchange.

In January 2013 the IRS issued a clarifi-

cation entitled "Shared Responsibility for Employers Regarding Health Coverage." This publication included instructions for employers whose benefit plans operate on a fiscal year.

To address the issue of employees who participate in fiscal year cafeteria plans, the Treasury Department and the IRS will allow a one-time transition period. Participants will be able to change from an employer-sponsored health insurance plan to a state exchange plan, even though their plan year does not start on January 1.

Affected large employers may, at their discretion, amend their written cafeteria plans to permit either or both of the following changes in salary reduction elections:

- Employees who elect to reduce their salary through the cafeteria plan for accident and health plan coverage with a fiscal plan year beginning in 2013 are allowed to prospectively revoke or change their election with respect to the accident or health plan once, during the plan year, without regard to whether they experienced a change in status event described in the change of status regulations 1.125-4; and
- Employees who failed to make a salary reduction election through their employer's cafeteria plan, for accident and health plan coverage with a fiscal plan year beginning in 2013 before the start of the cafeteria plan year beginning in 2013, are allowed to make a prospective salary reduction election for accident and health coverage on or after the

first day of the 2013 plan year of the cafeteria plan year, without regard to whether they experienced a change in status event described in 1.125-4.

Why is allowing employees to seek coverage on the exchange so important?

ACA was written to assure that employees and individuals could purchase insurance coverage through state exchanges. Allowing change of cafeteria elections mid-year provides maximum flexibility to employees. The proposed rule offers this example:

The shared responsibility rule for applicable large employers means they are subject to a specific "assessable payment" starting January 1, 2014, if they either:

- Fail to offer full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored health plan and any full-time employee is certified as having received a premium tax credit or cost-sharing reduction; or
- Offer full-time employees (and their dependents) minimum essential coverage

that meets minimum value and affordability directives and one or more employees are certified as having received a premium tax credit or cost-sharing reduction.

An applicable large employer is an employer that employed an average of at least 50 full-time employees or full-time equivalents, based on hours of service, on business days during the preceding calendar year. Without making the suggested amendments to their cafeteria plans, these assessable payments could really add up to a hefty fee if only one employee enrolls at a state exchange and receives a credit for premium.

While the IRS has provided this welcome clarification and remediation for employers with fiscal year cafeteria plans, it is not mandatory that employers offer this option to their employees. The proposed rule also included an expanded timeframe for adopting this one-time change in status amendment to cafeteria plans. Cafeteria plans may be amended retroactively to implement these transition rules. The retroactive amendment must be made by

December 31, 2014, and can be retroactive to the date of the first day of the 2013 cafeteria plan year.

This amendment is only for accident and health coverage offered through a cafeteria fiscal year plan beginning in 2013 and does not apply to any other qualified benefits offered through the plan, such as health flexible spending accounts. It is also temporary and applicable only to cafeteria plans that begin in 2013.

Details are in the Federal Register dated January 2, 2013, available at www.gpo.gov/fdsys/pkg/FR-2013-01-02/html/2012-31269.htm.

While there is time to prepare for this change, there's no time like the present for employers to make the amendment to cafeteria plans so employees can begin considering exchanges. 🌐

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