

October 21, 2019

California Notice Law for Flexible Spending Accounts

On August 30, 2019, Governor Gavin Newsom of California enacted [Bill No. 1554](#).

Existing California law requires all employers to notify employees of information relating to employment and benefits. This additional bill requires employers to notify employees, who participate in flexible spending accounts and work in California, of any deadlines applicable to withdrawing funds before the end of the plan year.

Generally, flexible benefits plans are written to accommodate a “run out” period, after the formal end of the plan year, for participants to turn in claims incurred during the plan year. Some plans may allow a 2 ½ month extended period of coverage (grace period), after the end of the plan year, in which to incur expenses during the current year and use left-over funds from the previous plan year. Additionally, plans may allow participants to carry over up to \$500 from a previous plan year to the current year from their healthcare flexible spending accounts.

The deadline to withdraw funds may be different according to the benefits selected. For instance, the dependent care portion of the plan may have a run out period for turning in claims incurred in the previous plan year, while the healthcare flexible spending account (FSA) may allow for a grace period or carry over, and thus a separate run out period.

These factors need to be taken into consideration when creating and distributing employee notices including, whether the FSA account is for dependent care, healthcare or adoption assistance.

The Notice needs to be delivered to participants before the plan’s year end advising them of all deadlines to withdraw funds. The Notice also must be provided in two different forms, one of which may be electronic.

Notices may be provided as outlined below, but are not limited to the following:

- Electronic mail communication
- Telephone communication

- Text message notification
- Postal mail notification
- In-person notification

The Secretary of State for California has stated that a statute enacted during a regular session of the Legislature takes effect on January 1 of the following year, unless a date is specified in the statute. This means that benefit plans ending any time in 2020, up to and including December 31, 2020, will be required to provide two notices to California employees prior to their plan's year end.

Notices may be delivered at any time during the plan year and may include the delivery of the Summary Plan Description. As more detail is published in regard to the notice timing and form, we will provide additional information on this new requirement.

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