TAXSAVER PLAN

"Your Satisfaction Is Our Success"

# WHAT YOU NEED TO KNOW....

## COBRA & CHIPRA PLAN AMENDMENTS:

Plan documents need to be amended for COBRA and CHIPRA. Although most Cafeteria Plan documents are not affected by these amendments, your Health & Welfare (ERISA) documents would be. We can prepare the necessary amendments for $300.00. If you need this service, please contact Kelsey.

## FMLA & LEAVE OF ABSENCE FACTS:

You may not be aware of how FSA's are affected when an employee goes out on FMLA or an unpaid leave of absence. Here is an over-view. Additional information is always available – please call us when you are presented with a leave of absence situation.

- **Unpaid FMLA**
  - May revoke coverage at start of leave
  - Employer may require employee to maintain coverage but pay the employee's share of the premium during the FMLA
  - May continue coverage with payment
    - Pre-pay
    - Pay as they go
    - Catch up when they return
    - Allowed all open enrollment rights as an active participant
    - Scheduled payments not made? Employer may allow catch up option upon return or terminate coverage

- **Paid FMLA** – coverage continues as usual and payments are made from sick time, vacation, etc.
  - When coverage is terminated during the leave for non-payment
    - Coverage is to be reinstated upon return
    - Claims incurred during period of termination will not be covered
    - Health FSA:
      - Missed premiums may be made up to have full coverage available
      - Coverage may be reinstated and the benefit amount is reduced by the amount of missed premiums

- Coverage is reduced by prior reimbursements

- **Leave of Absence**
  - Assumes not FMLA
  - No election change allowed unless the leave results in a loss of eligibility
  - Payments are made after tax or on a catch up basis upon return from leave or pre-pay, the same options as offered on FMLA

- **Day Care FSA**: It is also important to note that the Day Care FSA works a bit differently when an employee goes out on leave. Please be advised that when both employee and spouse are not working, they are considered ineligible to participate in the Day Care FSA and pre-tax contributions should be stopped until both employee and spouse are working again.

- **USERRA:**
  - Continuation of coverage required while employee called to duty and absent from work
  - Guaranteed reemployment when duty has ended
  - Immediate reinstatement in employer's health plan if coverage was terminated as a result of duty and employee is reemployed
  - If leave is paid for under Employer's policy, premiums should be paid from wages
  - If leave is unpaid, generally acceptable to follow FMLA principles
  - HEART Act Amendment allows Health FSA participants to receive their cash FSA balance from the Plan without claims incurred

## DEFINITION OF INVOLUNTARY TERMINATION UNDER ARRA:

Additional information has been provided under section 3001 of ARRA but not for any other purposes under the law. This information will assist you in defining involuntary terminations.

- An involuntary termination means a severance from employment due to the independent exercise of a unilateral authority of the employer to terminate the employment, other than due to the employee's implicit or explicit request, where the employee was willing and able to continue performing services. This also includes an employee-initiated termination if the termination from employment constitutes a termination for good reason due to employer action that causes a material negative change in the employment relationship to the employee. Do not confuse involuntary termination with involuntary termination of health coverage. The determination of whether a termination is involuntary is based on all the facts and circumstances.
- An involuntary reduction to zero hours, such as a lay-off, furlough or other suspension of employment, resulting in a loss of health coverage is an involuntary termination for purposes of premium reduction.
- Generally, a reduction in hours is not considered an involuntary termination. However, an employee's voluntary termination in response to the employer-imposed reduction in hours may be an involuntary termination if the reduction in hours is a material negative change in the employment relationship for the employee.

- Involuntary termination occurs when the employer takes action to end the individual's employment status while the individual is absent from work due to illness or disability.
- Retirement can be considered involuntary termination if the facts and circumstances indicate that, absent retirement, the employer would have terminated the employee's services and the employee had knowledge that the employee would be terminated.
- Termination for cause is considered involuntary termination unless the termination of employment is due to gross misconduct of the employee.
- A resignation as the result of a material change in the geographic location of employment for the employee is considered an involuntary termination.
- Work stoppage as a result of a strike initiated by employees or their representatives is considered voluntary termination. However, a lockout initiated by the employer is considered an involuntary termination.
- Involuntary termination includes a termination elected by the employee in return for a severance package (a "buy-out") where the employer indicates that after the offer period for the severance package, a certain number of remaining employees in the employee's group will be terminated.

Our recommendation is to err on the side of caution when determining who is eligible for premium assistance.

## DEFINING DEPENDENT ELIGIBILITY IN A SECTION 125 PLAN:

Recently, we have had many questions about a dependent's eligibility under a Section 125 Plan. The information applies to all pre-tax benefit plans, not just FSA plans. While insurance contracts may cover a dependent until a certain age, that dependent may not qualify for pre-tax benefits.

Code Section 152 allows for two types of dependents. A Dependent may be a Qualified Child or a Qualified Relative.

A **Qualified Child** must meet the following requirements:

- The child must be the taxpayer's child, brother, sister, stepbrother, stepsister or a descendant of any such person
- The child must have the same principal place of abode as the taxpayer for more than half of the taxable year
- The child must not have attained age 19 (age 24 if a full time student) as of the close of the calendar year in which the taxpayer's year begins (unless the child is permanently and totally disabled)
- The child must not have provided over half of his or her own support during the calendar year in which the taxpayer's taxable year begin

A **Qualified Relative** must meet the following requirements:

- The individual must be the taxpayer's child, brother, sister, stepbrother, stepsister, parent, stepparent, brother or sister's son or daughter, parent's brother or sister, in-law (son, daughter, mother, father, brother or sister) or an individual who, for the taxable year, has the same principal abode

as the taxpayer if there is no relationship in place and is a member of the taxpayer's household (note: an individual shall not be treated as a member of the taxpayer's household if…the relationship between such individual and the taxpayer is in violation of local law)

- The individual's gross income for the calendar year in which the taxpayer's taxable year begins must be less than the Code 151(d) exemption amount
- The individual generally must have received over half of his or her support from the taxpayer during the calendar year in which the taxpayer's taxable year begins
- The individual cannot be a qualifying child of the taxpayer or any other taxpayer

What does this all mean? If your plan covers dependents past the age of 19, it is important to make sure that the individual can prove full time student status. If the individual is 19 and not enrolled as a full time student, the individual may qualify as a Qualified Relative, but we suggest that the employee provide a form of substantiation to protect the Plan. Once the individual reaches the age of 25, they may qualify for pre-tax benefits as a Qualified Relative, but we suggest that the employee provide a form of substantiation to protect the Plan. Domestic Partners are also tricky, because they are not always considered a spouse, based on local law, but may qualify as a Qualified Relative, depending on local law. Bottom line: when you have a concern, call us.

Coming next month: information about Wrap Documents and Non-Discrimination Testing.

As always, we are here to answer your questions.

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