

September 19, 2014

Notice 2014-55 Additional Permitted Election Changes for Health Coverage Under § 125 Cafeteria Plans

Treasury and the IRS released Notice 2014-55, which expands the application of the permitted election change rules for health coverage under a § 125 cafeteria plan in two situations that arise under the Affordable Care Act. This is good news and will likely make plan administration a bit easier in certain circumstances.

The Notice addresses two specific situations in which a cafeteria plan participant may wish to revoke, during a period of coverage, the employee's election for employer-sponsored group health coverage under the cafeteria plan in order to purchase other minimum essential coverage, including a Qualified Health Plan through an Exchange/Marketplace established under the ACA.

- Reduction in Hours of Service Below 30. The first situation involves a participating employee whose hours of service are reduced so that the employee is expected to average less than 30 hours of service per week but for whom the reduction does not affect the eligibility for coverage under the employer's group health plan. (This may occur, for example, under the look back measurement method when a FT employee is in a stability period).
 - Under the look-back measurement method, an employee determined to be full-time based on hours of service during a measurement period must be treated as a full-time employee during a subsequent stability period, regardless of the employee's hours of service during the stability period.
 - Because a reduction in hours of service below 30 hours per week would not result in a change in the employee's eligibility for the group health plan under current cafeteria plan rules, the cafeteria plan could not allow the employee to change the employee's election during the period of coverage.
- Permitted Access to Marketplace Coverage During the Coverage Period. The second situation involves an employee participating in an employer's group health plan who would like to cease coverage under the group health plan and

purchase coverage through an Exchange/Marketplace without that resulting either in a period of duplicate coverage under the employer's group health plan and the coverage purchased through an Exchange/Marketplace or in a period of no coverage.

- Under the current change in status rules, a cafeteria plan may not allow an employee to revoke an election under the group health plan during a period of coverage solely to enroll in a Qualified Health Plan through an Exchange/Marketplace.
- This is not normally an issue for calendar year plans. However, an individual enrolled through a cafeteria plan with a non-calendar plan year might not be able to synchronize the change in group health plan coverage to avoid an overlapping period of coverage or a period without coverage because the open enrollment period rules for Marketplaces do not permit the purchase of coverage commencing upon the end of the non-calendar cafeteria plan year.

GUIDANCE UNDER IRS NOTICE 2014-55

The Notice permits a cafeteria plan to allow an employee to revoke his or her election under the cafeteria plan for coverage under the employer's group health plan (other than a flexible spending arrangement (FSA)) during a period of coverage in each of these situations described above.

HOWEVER – there are a few conditions that must be met AND the written cafeteria plan must be amended to adopt these expanded change rules.

Conditions for Revocation due to Reduction in Hours of Service Below 30

- The employee has been in an employment status under which the employee was reasonably expected to average at least 30 hours of service per week and there is a change in that employee's status so that the employee will reasonably be expected to average less than 30 hours of service per week after the change, even if that reduction does not result in the employee ceasing to be eligible under the group health plan; and
- The revocation of the election of coverage under the group health plan corresponds to the intended enrollment of the employee (and any related covered individuals), in another plan that provides minimum essential coverage; and

- The new coverage becomes effective no later than the first day of the second month following the month that the group health plan coverage was revoked.

Conditions for Revocation due to Enrollment in a Qualified Health Plan through an Exchange/Marketplace

- The employee seeks to enroll in a Qualified Health Plan through an Exchange/Marketplace during the Marketplace's annual open enrollment period; or the employee is eligible for a Special Enrollment Period to enroll in a Qualified Health Plan through an Exchange/Marketplace when the Marketplace's enrollment is otherwise closed; and
- The revocation of the election of coverage under the group health plan corresponds to the intended enrollment of the employee (and any related covered individuals) in a Qualified Health Plan through an Exchange/Marketplace; and
- The new QHP coverage is effective beginning no later than the day immediately following the last day the revoked group health plan coverage was in effect.

Reliance on Employee Representation

A cafeteria plan may rely on the reasonable representation of an employee that the employee (and related covered individuals) have enrolled or intend to enroll in the coverage for which they revoked their coverage under the group health plan and that such coverage will be effective no later than the applicable date required by the guidance in the Notice (as described above).

EFFECTIVE DATE AND PLAN AMENDMENTS

The guidance in this Notice is effective on September 18, 2014. In no event may an election to revoke coverage become effective retroactively to a date prior to September 18, 2014.

To allow the new permitted election changes, the written cafeteria plan document must be amended to provide for these election changes, and the employer must inform participants of the amendment. A cafeteria plan amendment must generally be adopted on or before the last day of the plan year in which the elections are allowed, and may be effective retroactively to the first day of that plan year; provided that the cafeteria plan operates in accordance with the guidance under the Notice.

However, a cafeteria plan with a plan year that begins in 2014 may be amended to adopt the new permitted election changes at any time on or before the last day of the plan year that begins in 2015.

* * * * *

Please contact me if you have any questions.

Richard A. Szczebak, Esq.

617-399-0441 | rszczebak@parkerbrown.com

The foregoing has been prepared for the general information of clients and friends of the firm. It is not meant to provide legal advice with respect to any specific matter and should not be acted upon without professional counsel. If you have any questions or require any further information regarding these or other related matters, please contact your Parker Brown Macaulay & Sheerin representative. This material may be considered advertising under certain rules of professional conduct.