

Employee **Benefits** Corporation



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Compliance Buzz

Tax Reform and Tax Advantaged Benefits

After months of debate on tax reform, Congress passed the "Tax Cuts and Jobs Act" (H.R. 1) to overhaul the tax code. Items of interest for tax advantaged benefits include the dependent care flexible spending account, transportation assistance, education assistance programs, transportation plans, and the individual mandate under the ACA.

With implementation starting in January, the impact of "Tax Cuts and Jobs Act" would be felt all throughout early 2018. Tax reform legislation removes the ACA's individual mandate requirement for months beginning after 12/31/18 and onward. [Read more >](#)



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Health Benefits 101



What are Documentation?



Who is the Employer?

Who is eligible?

Who is a dependent and why does it matter?

When can a domestic partner participate?

What tax consequences could be imposed?



Who is the Employer?

Who is the Employer?

- **Entity that sponsors and maintains employee benefit plans**
 - Public sector governmental employers
 - Private sector employers
- **Governing laws vary for general operation of health plans**
 - Public sector governmental employers subject to the Public Health and Services Act (PHSA)
 - Private sector employers subject to the Employee Retirement Income Security Act (ERISA)

Who is the Employer?

- **Public sectors employers do not file incorporation papers**
 - Governmental entities
- **Private sector employers file incorporation papers**
 - Sole Proprietor
 - Partnership
 - C Corporation
 - Subchapter S Corporation
 - Limited Liability Company

Who is the Employer?

- **Private sector employers file incorporation papers**
 - Limited Liability Partnership
 - Nonprofit
 - Cooperative
- **Incorporation governs tax options**
 - How employer files taxes affects eligibility if file as
 - **Sole Proprietorship**
 - **Partnership**
 - **Subchapter S Corporation**

Who is the Employer?

- **Multiple incorporated organizations may be part of same employer (controlled group)**
 - Common control, common capital interest, or linked through joint activity
 - Separate FEINs
 - Employee ineligible through one controlled group employer may be eligible through secondary controlled group employer

Who is the Employer?

- **Three types of controlled groups**
 - Controlled Group of Corporations (§414(b))
 - **Two or more corporations under common ownership or common capital interest**
 - Trades or Businesses under common control (§414(c))
 - **Two or more trades or businesses under common ownership or common capital interest**

Who is the Employer?

- **Three types of controlled groups**
 - Affiliated Service Group (ASG) (§414(m))
 - **Two or more employers linked through joint activity or a combination of activity and common ownership**

***Note: Determination of control group status falls to the employer's legal counsel**

Who is eligible?

Who is eligible?

- Cafeteria Plan eligibility
- Includes all cafeteria plan elections: pre-tax premiums, FSAs, pre-tax HSA funding
 - Employer defines eligibility (must be primarily for current employees)
 - Can include current and former common-law employees

Who is eligible?

- **Includes all cafeteria plan elections: pre-tax premiums, FSAs, pre-tax HSA funding**
 - Can include current and former common-law employees
 - **Self-employed individuals are not common-law employees**
 - Based on how company files taxes
 - » Owners in a sole proprietorship
 - » Partners in a partnership
 - » More than 2% shareholder of a Subchapter S Corporation
 - » Employee spouses and family members of lineal ascent and descent of more than 2% shareholders of a Subchapter S Corporation

Who is eligible?

- **Cafeteria Plan eligibility**
 - Spouses, dependents and eligible children (age 26) may have coverage through employee
 - Controlled group member employees generally eligible
 - Health Care FSA
 - **Employer defines eligibility**

Who is eligible?

- **Cafeteria Plan eligibility**
 - Health Care FSA
 - **IRS Notice 2013-54 Q/A 7**
 - Employees must be eligible for group medical plan or violates ACA
 - Employer contributions must
 - » **Not exceed \$500**
 - » **Be restricted to group medical plan enrollees or**
 - » **Be contingent upon employee's election or violates ACA**

Who is eligible?

- **Cafeteria Plan eligibility**
 - Dependent Care FSA
 - **Employer defines eligibility**
 - **To be eligible for reimbursement, the care must be**
 - Custodial care to allow participant and spouse to work, look for work or go to school full-time
 - Provided by individual who claims as taxable income and cannot be participant's dependent or child under age 19

Who is eligible?

- **Cafeteria Plan eligibility**
 - Dependent Care FSA
 - **If employee is divorced or separated from other parent**
 - Employee must be parent that has custody majority of nights during the year
 - If 50/50 custody, employee must be parent who has higher adjusted gross income
 - **If employee is cohabitating with other parent, then employee must be parent claims the child as a dependent on taxes**

Who is eligible?

- **HRA eligibility**
 - Employer defines eligibility
 - Can include current and former common-law employees
 - **Self-employed individuals are not common-law employees**
 - Based on how company files taxes
 - » **Owners in a sole proprietorship**
 - » **Partners in a partnership**
 - » **More than 2% shareholder of a Subchapter S Corporation**
 - » **Employee spouses and family members of lineal ascent and descent of more than 2% shareholders of a Subchapter S Corporation**

Who is eligible?

- **HRA eligibility**

- Spouses, dependents and eligible children (age 26) may have coverage through employee
- Controlled group member employees generally eligible
- HRAs with deposits that reimburse medical
 - **Employees must be enrolled in group medical plan or violates ACA**
 - **Cannot reimburse medical expenses of an individual not enrolled in group medical plan**

Who is eligible?

- **HSA eligibility**

- Determined on the first of each month
- Contribution limits are based on number of eligible months in the year
- Self-employed individuals may be eligible
- Spouses and dependents may have coverage through employee
- Cannot be claimed as a dependent on another's taxes
- Cannot be entitled to Medicare (enrolled in)

Who is eligible?

- **HSA eligibility**

- Must be covered under qualified High Deductible Health Plan (HDHP)
- Cannot have any disqualifying coverage
 - Coverage that reimburses prior to minimum HDHP deductible
 - Standard health FSA held by individual or individual's spouse
 - HRA that reimburses prior to minimum HDHP deductible
 - Standard health FSA created due to prior plan year rollover
 - Standard health FSA coverage due to prior plan year grace period

Who is eligible?

- **Business reorganization can change eligibility**

- Company files taxes as a sole proprietorship or partnership
 - **Individual becomes owner**
 - Immediately loses eligibility
 - Expenses incurred after date are ineligible
 - **Individual ceases to be owner**
 - Immediately gains eligibility
 - Expenses incurred after date are eligible

Who is eligible?

- **Business reorganization can change eligibility**
 - Company files taxes as a Subchapter S Corporation
 - **Individual becomes over 2% shareholder or employee spouse or family member of lineal ascent or descent of more than 2% shareholders**
 - Retroactively loses eligibility to first day of the business tax year
 - Expenses incurred after date are ineligible

Who is eligible?

- **Business reorganization can change eligibility**
 - Company files taxes as a Subchapter S Corporation
 - **Individual ceases to be over 2% shareholder or employee spouse or family member of lineal ascent or descent of more than 2% shareholders**
 - Delayed eligibility to first day of the following business tax year
 - Expenses incurred after date are eligible

Who is a dependent and why does it matter?

Who is a dependent and why does it matter?

- **Dependent**
 - Defined differently depending on the purpose
 - **IRC §152 for the definition of a qualifying child or qualifying relative for income tax deduction purposes and for HSA purposes**
 - Parent cannot use their HSA for expenses associated with an adult child who is not an income tax dependent (can open their own HSA, if eligible)
 - **IRC §105(b) for tax-free health coverage purposes**
 - **IRC §129 for dependent care expense purposes**

Who is a dependent and why does it matter?

- **Dependent**

- IRC §152 Qualifying Child

- **Who**

- A child (or a descendent of such a child) of the taxpayer
 - An adopted child (including legally placed for adoption)
 - A brother, sister, stepbrother or stepsister of the taxpayer (or a descendent of any such relative)

Who is a dependent and why does it matter?

- **Dependent**

- IRC §152 Qualifying Child

- **Age**

- Not yet 19
 - Not yet 24 by the end of the year and is a student
 - Any age but permanently and totally disabled during the year

- **Income specifics**

- Receives more than half of his or her support in that year from the taxpayer

Who is a dependent and why does it matter?

- **Dependent**

- IRC §152 Qualifying Child

- **Residence**

- Same principal place of abode as the taxpayer for more than half of the relevant calendar year

Who is a dependent and why does it matter?

- **Dependent**

- IRC §152 Qualifying Relative

- **Who**

- A child (or a descendent of such a child) of the taxpayer
 - An adopted child (including legally placed for adoption)
 - Brother, sister, stepbrother or stepsister
 - Father, mother (or ancestor), stepmother or stepfather
 - Niece, nephew, aunt or uncle

Who is a dependent and why does it matter?

- **Dependent**

- IRC §152 Qualifying Relative

- **Who**

- Father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law

- Any other member of his or her household (unless the relationship violates local law)

- » **Could include a domestic partner**

- » **Could include a roommate**

Who is a dependent and why does it matter?

- **Dependent**

- IRC §152 Qualifying Relative

- **Age**

- None

- **Income specifics**

- Receives more than half of his or her support in that year from the taxpayer

- **Residence**

- Same principal place of abode as the taxpayer for more than half of the relevant calendar year

Who is a dependent and why does it matter?

- **Dependent**

- IRC §105(b) Eligible Child

- **Who**

- A son, daughter, stepson or stepdaughter

- An eligible foster child

- A legally adopted child

- **Age**

- Will not attain age 27 during the current tax year

Who is a dependent and why does it matter?

- **Dependent**

- Affordable Care Act

- **Uses IRC §105(b) Eligible Child definition**

- **States non-excepted benefits must cover eligible children through the 27th birthday**

- Excepted benefits can still cover those defined under IRC §152 Qualifying Child and Qualifying Relative

- Plans allowing children to stay on beyond requirement can allow tax-free premium payment and reimbursement so long as the eligible child meets definition under IRC §105(b)

When can a domestic partner participate?

When can a domestic partner participate?

- **Plans that allow tax dependents must allow domestic partner coverage if that domestic partner meets the IRC §152 Qualifying Relative definition**
 - Coverage may be tax-free under IRC §105(b)
 - Employee cannot use their HSA for expenses associated with a domestic partner who is not an income tax dependent (can open their own HSA, if eligible)

When can a domestic partner participate?

- Plans may specify parameters regarding non-tax dependent domestic partner coverage, but cannot disallow same sex spouses
 - Plans allowing non-tax dependent domestic partners coverage may not allow tax-free premium payment and reimbursement

What tax consequences could be imposed?

What tax consequences could be imposed?

- Failure to operate the plan consistent with IRS Regulations will disqualify the plan
 - Examples:
 - Issuing pre-tax reimbursements to ineligible owners or employees
 - Allowing pre-tax payments or reimbursements for expenses associated with individuals who are not the employee, former employee, or spouse or dependent of the employee
- Disqualification of plan could mean tax consequences for employer and participants

Questions?

- Any questions can be addressed by e-mail or phone at your convenience

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