

Nondiscrimination Testing Overview Q&A – the following questions were asked during the webinar sessions in July 2018,

Q: If we have a self-funded dental plan, do we include the total calculated premium we would charge for COBRA?

A: Self-funded plans should use the premium equivalent. Often the plan administrator provides a premium equivalent that is used to determine the single/family rates for the benefit. The rates are predicated on expected costs plus administrative charges. This single/family charge would be similar to the premium that would be charged to a COBRA participant, less the 2% administrative expense.

Q: Our single insurance is paid 100% by the employer. When a dependent or family election is made the employee pays 150.00 per month towards the family premium. We offer a Health Savings Account contribution based on the insurance coverage elected by the employee, whether that be single or family. Single coverage receives \$500.00 per year and family coverage is \$1,000.00 per year. Our plan year is 12-01. We pay half in the year ending December and the rest in January. We are confused on the 100 percent employer paid for single coverage.

A: When reporting the premium in Section 3 of the worksheet, the single insurance would not be included because it is paid entirely by the organization and not going through the Section 125 plan. If the employee adds a dependent or has family coverage, both the employee and employer dollars need to be reported, since any employee-paid portion of the premium causes the entire premium to be considered paid pre-tax.

For HSA contributions, since they are made twice during the plan year, please add them together to get the annual amount and then divide that by twelve to get the monthly amount. (Example: \$1000 family contribution divided by 12 = \$83.33 monthly contribution x number of families)

Q: We only offer an HSA plan, with the same eligibility and benefits for all employees, and the employer pays more than 75% of the premium. Since we automatically pass the Safe Harbor test, do we need to do the non-discrimination testing at all?

A: The Section 125 Safe Harbor Test only refers to the health plan premium and not the HSA plan.

If the company pays 75% or more of every health plan premium for every eligible employee, only the Section 125-Contributions and Benefit Test passes.

The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.



1350 Deming Way, Suite 300
Middleton, WI 53562-4640
P: 800 346 2126 | 608 831 8445
F: 608 831 4790
An employee-owned company
www.ebcflex.com

Employee Benefits Corporation | **Nondiscrimination Testing Overview**

Q: If a preliminary test is not done can that be an issue when the end of year testing is performed?

A: The preliminary test is an optional test that is not required by the IRS. Some employers choose to run a preliminary test if they have a history of failing so that they have ample notice to make any necessary changes to the plan. Even if a preliminary test is performed, end of year testing is still required.

Q: What does it mean by “day to day authority?” I'm struggling with the definition.

A: An officer is an “administrative executive who is in regular and continued service.” An employee who is given the title of an officer but no authority should not be included. Similarly an employee who is not given the title of an officer but has authority to make day-to-day administrative decisions for the organization should be included.

Some examples are Superintendent of a school district, Executive Director of a non-profit, President, CEO, etc.

Q: Will we be getting a copy of this presentation?

A: The slides are available on the EBC website under Education and then Webinars.

Q: Please define further the "top 25% of employees by pay."

A: This pertains to the 105 test. The 105 test looks at the information that is provided on the nondiscrimination census worksheet to see if there are excludable employees. We then rank the non excludable employees from highest paid to lowest paid and the top 25% of those employees by pay are considered highly compensated for the Section 105 test.

Q: Do you only run tests on plans that we have through EBC Flex or will you run it on all plans we have (even if they're not with EBC Flex)? Will EBC do nondiscrimination testing for non EBC cafeteria plans (plans administered by another TPA)?

A: If EBC administers an employer’s Cafeteria Plan, EBC will test all benefits going through the plan. EBC will do testing for plans that we do not administer. Please contact your Regional Sales Director to get information on our Compliance Services products.

The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.



1350 Deming Way, Suite 300
Middleton, WI 53562-4640
P: 800 346 2126 | 608 831 8445
F: 608 831 4790
An employee-owned company
www.ebcflex.com

Employee Benefits Corporation | **Nondiscrimination Testing Overview**

Q: Can you give some examples when reporting the annual compensation for a non-calendar plan year ending August 31st, 2018?

A: For a non-calendar plan year there are two ways to report compensation. The first way is the preferred method which is to report gross annual compensation looking back a plan year. The other way is the alternative method which is to look back to prior tax year that ended during the current plan year.

Preferred method:

- **Employee hired prior to September 1, 2017**
 - Report gross annual compensation for September 1, 2016 to August 31, 2017
- **Employee hired after September 1, 2017 and terminated employment already**
 - Report gross annual compensation from hire date to termination date
- **Employee hired after September 1, 2017 and is still actively employed**
 - Report estimated gross annual compensation from hire date to end of plan year August 31, 2018

Alternative method –

- **Employee hired prior to January 1, 2018**
 - Report gross annual compensation for January 1, 2017 to December 31, 2017
- **Employee hired after January 1, 2018 and terminated employment already**
 - Report gross annual compensation from hire date to termination date
- **Employee hired after January 1, 2018 and is still actively employed**
 - Report estimated gross annual compensation from hire date to December 31, 2018

Q: How is testing conducted for organizations with a Cafeteria plan on a non-calendar year, and an FSA on a calendar year?

A: Testing is done on the FSA plan year. When reporting the monthly premium amounts for any benefits going through the Cafeteria Plan, we require that you pick any month during the FSA plan year.

The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.



1350 Deming Way, Suite 300
Middleton, WI 53562-4640
P: 800 346 2126 | 608 831 8445
F: 608 831 4790
An employee-owned company
www.ebcflex.com

Employee Benefits Corporation | **Nondiscrimination Testing Overview**

Q: I don't see an area on the worksheet to put the Health Care FSA election or the Dependent Care FSA election. Is this something we don't have to provide as Employee Benefits Corporation will use your own data from our account?

A: Yes, that is correct, if we administer the Health Care FSA or Dependent Care FSA, you do not need to provide the information because we can run a report to get the data.

Q: Do you do testing for plans that are not under your management?

A: Yes, we do testing for Cafeteria Plans that we do not administer. Please contact the Regional Sales Director for more information.

Q: How much does EBC charge for POP plans and/or FSA Medical and Dependent Care administration? What about for HRA administration?

A: For cost information, please contact the sales department. Their email address is sales@ebcflex.com

Q: Contributions & Benefits Test: Company pays 75% or more of every health plan premium. Is this the EE premium only? Is the 75% based on "basic medical plan" and not the "buy-up plan"?

A: The Section 125 Safe Harbor test passes if the client pays 75% or more of every health plan premium for every eligible employee. This means that for the most expensive health plan that an eligible employee could possibly have, the client would pay 75% or more of that premium.

If a client pays different percentages based on hours worked and it does not pay 75% or more of the premiums for part-time employees, then the Safe Harbor will not pass.

If the client pays 75% or more of single coverage, but does not pay 75% of family coverage, then the Safe Harbor does not pass. It has to pay 75% or more of every health plan premium for every eligible employee.

Q: Did the definition of an HCE (highly compensated employee) change from salary > \$140,000 to the top 25% of salaries?

A: No, the definition of highly compensated has not changed for the Section 105 test. For the 129 and 125 test HCEs are employees whose compensation exceeds \$120,000.

The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.



1350 Deming Way, Suite 300
Middleton, WI 53562-4640
P: 800 346 2126 | 608 831 8445
F: 608 831 4790
An employee-owned company
www.ebcflex.com

Employee Benefits Corporation | **Nondiscrimination Testing Overview**

Q: A lot of plans are set up for different waiting periods set for "managers" to "all other full-time" employees. Confirming this would make a group fail their nondiscrimination test?

A: Having different waiting periods that would result in a favorable treatment of the highly compensated would fail the benefit test. One of them is called the availability test. If there are different waiting periods for different classes of employees, this would result in test failure.

Q: Please define "must be eligible for the benefit being tested"....does this mean if an employer only offers the benefit to executives, all others aren't included? Not making sense because the testing is comparing HCEs to Non-HCEs.

A: For example, if we are doing the Section 129 test, the employee must be eligible for the Dependent Care FSA in order to be counted as an eligible employee.
See below for more information on each test and what is determined to be an HCE.

Q: 100% Employer-paid single, do you mean employee only coverage paid 100%, not 100% of all tiers, correct?

A: Correct. 100% employer-paid single refers to employee only coverage paid at 100% by the employer. 100% employer-paid single insurance premiums could cause a failure with the Section 125-Contributions and Benefits Test.

Q: We are a new company which began business 7/10/17, our plan year is 11/1/17 to 8/31/18. How do we handle reporting the annual compensation for a short plan year?

A: The same compensation for the short plan year should be reported as if the plan year was twelve months in duration and ended on the same date.

Therefore, when reporting the annual compensation you could either choose to report from 9/1/2016-8/31/2017 (preferred method) or 1/1/2017-12/31/2017 (alternative method).

Q: If we are an employer who is currently self-insured with our medical plans, and we move to fully-insured medical plans, how will that impact our testing requirements?

A: Moving from a self-insured medical plan to fully-insured medical plan will not impact testing requirements for the cafeteria plan because testing is still going to be required to be completed at the end of the plan year.

The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.



1350 Deming Way, Suite 300
Middleton, WI 53562-4640
P: 800 346 2126 | 608 831 8445
F: 608 831 4790
An employee-owned company
www.ebcflex.com

Employee Benefits Corporation | **Nondiscrimination Testing Overview**

Please contact your insurance carrier to find out how nondiscrimination testing for your health plans will work.

Q: Is there a certain salary that is set for highly compensated employees? If so what is that amount?

A: Different tests have different definitions of highly compensated employees (HCE).

- **Section 105 - Self-funded health plans**
 - Highly Compensated includes
 - Over 10% owners
 - Top 25% of employees by pay
 - Officers
- **Section 129 - Dependent Care FSA**
 - Highly Compensated includes
 - Over 5% owners
 - Employees whose compensation exceeds threshold of \$120,000
 - Prior year threshold and compensation applies unless new hires
 - Limit to top 20% of employees by pay if more than 20% of employees' compensation exceeds threshold
- **Section 125 - Cafeteria Plan**
 - Highly Compensated includes
 - Officers
 - Employees whose compensation exceeds threshold of \$120,000
 - Prior year threshold and compensation applies unless new hires
 - Limit to top 20% of employees by pay if more than 20% of employees' compensation exceeds threshold
 - Over 5% owners
 - Spouse or tax dependent of any of these
- **Section 125 - Cafeteria Plan**
 - 25% Concentration Test (key employee test)
 - Key employees include
 - Officers who earn over threshold
 - More than 5% owners
 - More than 1% owners who earn over \$150,000
 - Spouses and dependents of any of these

The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.



1350 Deming Way, Suite 300
Middleton, WI 53562-4640
P: 800 346 2126 | 608 831 8445
F: 608 831 4790
An employee-owned company
www.ebcflex.com

Employee Benefits Corporation | **Nondiscrimination Testing Overview**

Q: Can you give some examples of including new hire data for a non-calendar plan year ending August 31st?

A: If the plan year was from September 1, 2017-August 31, 2018 and an employee was hired March 1, 2018. You would estimate gross compensation from hire date to end of the plan year August 31, 2018. So, for example, if the employee was hired at \$60,000 per year, you would report \$30,000, or 6 months of income from March 1 through August 31.

Q: Is an employer paid HRA part of these tests?

A: No, the HRA has a separate nondiscrimination test that must be completed prior to the plan start date. If you are an EBC HRA client, we provide a worksheet which you may use to complete your HRA testing.

The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.



1350 Deming Way, Suite 300
Middleton, WI 53562-4640
P: 800 346 2126 | 608 831 8445
F: 608 831 4790
An employee-owned company
www.ebcflex.com