

HEALTH AND DEPENDENT CARE FSA RELIEF

Hodgson Russ Employee Benefits Alert
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On December 27, 2020, the President signed the Taxpayer Certainty and Disaster Tax Relief Act, which is part of the Consolidated Appropriations Act of 2021 (CAA). This legislation makes temporary relief available for cafeteria plan participants with underspent dependent care and health flexible spending accounts (FSAs). Generally, FSAs are subject to a “use-it-or-lose-it” rule, requiring participants to forfeit any unused balance at the end of the plan year. Limited exceptions to this general rule exist for health FSAs, which may permit a limited carryover or a grace period.

Carryovers

Under existing law, a health FSA may allow participants to carryover a limited amount of their unspent FSA balance (up to \$550 for 2020 and \$560 for 2021) into the next plan year. Prior to the CAA, no such carryover exception to the “use-it-or-lose-it” rule existed for dependent care FSAs. Under the CAA, plan sponsors may amend their cafeteria plans to permit participants to carryover the full amount of any unspent health or dependent care FSA balance for plan years ending in 2020 or 2021.

Grace Period Extension

Under existing law, a health FSA (that does not permit carryovers) may allow participants a grace period within which they may incur expenses for up to 2½ months beyond the end of the plan year. No such grace period exception existed for dependent care FSAs. However, under the CAA, health and dependent care FSAs may be amended to allow participants a grace period of up to 12 months following the end of plan years ending in 2020 or 2021.

FSA Election Changes

Generally, participant elections to make pre-tax FSA contributions under a cafeteria plan are irrevocable during the plan year. Exceptions to this general rule are typically limited to situations where participants experience certain status change events, such as a marriage or the birth of a child. Under the CAA, however, plan sponsors may amend their cafeteria plans to permit prospective midyear election changes for any reason for plan years ending in 2021.

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Health FSA Post-Employment Reimbursement

Health FSA participants typically may not be reimbursed for expenses incurred after they have terminated employment, except in cases where they have elected and paid for COBRA coverage. Under the CAA, employers may permit terminated employees with an underspent health FSA balance to be reimbursed for expenses incurred after they have terminated employment (during calendar year 2020 or 2021) to continue to receive reimbursements through the end of the plan year in which participation ended (including any grace period).

Dependent Care FSA Age Extension

Normally, dependent care FSA plan sponsors may not reimburse participants for expenses incurred by their children after they attain age 13. The CAA however allows dependent care FSA reimbursement for expenses incurred after a child's thirteenth birthday until the later of end of the of 2020 plan year, or until the child's fourteenth birthday if there is money remaining at the end of the 2020 plan year.

Plan Amendment Deadline

Plan sponsors are not required to adopt any of these relief provisions. However, if adopted, cafeteria plans must be amended by the last day of the calendar year following the plan year in which the amendment becomes effective.

If you have questions or would like more information regarding FSA Relief or any Employee Benefits issue, please contact Michael Flanagan (716.848.1480), Amy Walters (716.848.1481) or any member of the [Employee Benefits Practice](#).

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