

**LEGAL ALERT:
FLEX PLAN CHANGES**

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IRS Notice 2020-29 has provided welcome relief to permit employees to **change elections** under Flexible Benefit Plans (“Flex Plans”) as a result of the COVID-19 pandemic. Unfortunately, relief is only available for Flex Plan election changes related to health plan coverage, Health Flexible Spending Accounts (“FSAs”) and Dependent Care Accounts. Mid-year changes for other Flex Plan benefits, such as cash in lieu of benefits or paid time off, are not covered by the guidance and will need to satisfy the traditional **qualifying life event** criteria for mid-year election changes. A summary of the new rules for clients of Palmieri & Eisenberg (“P&E”) is as follows:

Flex Plan Election Changes.

The guidance allows for the following **mid-year changes** for Flex Plan elections, in addition to the usual mid-year **qualifying life event** change rules.

- **Elect Traditional Health Plan Coverage.** An employee **make a new election** to accept employer-sponsored health coverage on a prospective basis, if the employee initially declined to elect employer-sponsored health coverage.
- **Change Traditional Health Plan Coverage Options.** An employee may revoke an existing election for employer-sponsored health coverage and make a **new election** to enroll in **different** health coverage sponsored by the same employer on a prospective basis (including changing enrollment from self-only coverage to family coverage).
- **Revoke Traditional Health Plan Coverage.** An employee may **revoke** an existing election for employer-sponsored health coverage on a prospective basis, provided that the employee attests, in writing, that the employee is enrolled, or will immediately enroll in other health coverage not sponsored by the employer.
- **Health FSA Elections.** An employee may **revoke** an election, make a **new election**, or **decrease** or **increase** an existing election regarding a Health FSA on a prospective basis.
- **Dependent Care FSA Elections.** An employee may **revoke** an election, make a **new election**, or **decrease** or **increase** an existing election regarding a dependent care assistance program on a prospective basis. Amounts already withheld from salary may only be used for dependent care expenses and **may not be returned** to an employee.

Extended Claims Period for Health and Dependent Care FSAs.

The guidance allows a Flex Plan to permit employees to apply unused amounts remaining in a Health FSA or a Dependent Care Account as of the end of a grace period ending in 2020, or a

plan year ending in 2020, to pay or reimburse expenses incurred for the same qualified benefit through December 31, 2020.

Impact on Health Savings Account (“HSA”) Eligibility. Similar to a traditional FSA carryover or grace period, the above extended period of Health FSA coverage will “disqualify” an employee from being eligible to contribute to an HSA, if the Health FSA is a general purpose Health FSA (and not a limited purpose Health FSA), or is not otherwise structured in a way that is compatible with HSA eligibility.

Increased Health FSA \$500 Carryover Rule.

The guidance modifies the **\$500 carryover** rule applicable to Health FSAs to index the carryover amount. The maximum carryover amount for a plan year is now set at **20%** of the maximum limit on elective contributions to the Health FSA for that plan year.

The maximum limit on elective contributions to a Health FSA for plan years beginning in 2020 is **\$2,750**. Thus, the maximum amount that may be carried over from a plan year starting in 2020 to a plan year starting in 2021 is **\$550** (20% of \$2,750).

HDHP Coverage for COVID Testing and Treatment.

The guidance clarifies that an HDHP **may provide** low-deductible or no-deductible coverage for COVID-19 testing and treatment (as provided in Notice 2020-15), effective for expenses incurred on or after January 1, 2020. Eligible testing includes testing for influenza A and B, norovirus and other coronaviruses, and Respiratory Syncytial Virus (“RSV”), as well as any items or services required to be covered under the Families First Coronavirus Response Act (“FFCRA”), such as office visit or sample collection related to testing.

HDHP Coverage for Telemedicine.

The guidance clarifies that an HDHP may provide **low-deductible** or **no-deductible coverage** for telemedicine service, as provided under the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), effective for expenses incurred on or after January 1, 2020, rather than March 27, 2020, as provided under the CARES Act.

Plan Amendments. Plan amendments **are required** to Flex Plans and other documents to allow the above changes by **December 31, 2021**, but may be retroactively effective to as early as January 1, 2020.

P&E hopes this information is helpful to our clients.

If you have any questions regarding this recent guidance, please contact Frank Palmieri at (609) 471-7679 or fpalmieri@p-ebenefitslaw.com.