

IRS Issues Cafeteria Plan Guidance in Response to Healthcare Reform

Cafeteria plans are being altered at most companies thanks to the new rules issued by the Internal Revenue Service. If employees enroll their eligible dependents on their health insurance plans, the new cafeteria plan rules allow those employees to make immediate tax-free contributions.



According to the IRS Commissioner Doug Shulman, this change was made necessary by the new federal healthcare legislation, which was passed on March 30th, 2010. The commissioner stated that the changes give companies and businesses the chance to offer a benefit that was worth their employees' while. He further stated that the IRS was prepared to make it as easy as possible for the new changes to be implemented and to include older children

of employees in those employees' tax-favored benefit plans.

Cafeteria plans are tax-favored insurance plans that allow employees to choose from a "cafeteria" of tax-free benefits, cash or taxable benefits.

Notice 2010-38 was issued by the IRS in order to fully explain and interpret the changes. In addition, the notice was designed to provide direction to employers, employees, insurers and other miscellaneous taxpayers.

The expanded tax benefit applies to group insurance plans for active employees and retirees, as well as self-employed workers. Self-employed workers can take advantage of this benefit if they qualify for the self-employed health insurance tax deduction.

Employees' children who will not reach the age of 27 by the end of the current year qualify for the tax benefit starting from March 30th of this year. It makes no difference whether the children are already covered under the employer's plan or added at a later date.

For the purposes of this new benefit, the child category includes a son, daughter, stepchild, adopted child or a qualifying foster child. This standard for the age of the child officially replaces the relevant age limits under prior federal tax law; additionally, the old requirement that a child qualifies as a dependent for tax filings is also superseded by this law.

Finally, the notice also states that cafeteria plans provided by employers can now allow employees to start making tax-free contributions for their children's health insurance coverage even if the cafeteria plan has yet to be amended. Sponsors of plans have until the end of 2010 to amend their plans.

We are pleased to present to you our quarterly agency newsletter. This newsletter is designed to give you timely and important information regarding insurance, government regulations, education, new products, and other areas of interest to employers and their employees. We value you, your employees, and your business and continue to strive to provide you with the very best products and service available. Thank you again for your business

Review These Tips Prior to E-Filing 5500

Starting January 2009, all Form 5500s are to be electronically filed using the Department of Labor's newly implemented electronic program, EFAST2. Here are some tips to remember to ensure that you fill this online form and electronically file Form 5500 smoothly and without facing any hassle:

1. Before filing using EFAST2, responsible parties should register at their website. Here they would identify the individual who would be completing the Form 5500 and all signing parties. Early registration is recommended.
2. The five roles available upon registration are Filing Author, Filing Signer, Transmitter, Schedule Author and Third Party Software Developer. It is important that one understands their roles prior to registration as they cannot change them once the registration is complete.
3. The Filing Author is the individual who completes this online form at EFAST2 and those who sign the Form 5500 should register as the Filing Signer.
4. Each individual uses their personal credentials and these are not associated to the company. The process of registration assigns each user with a personal identification number and password.
5. Either the Filing Author or a third party administrator can complete the Form 5500 online. This third party administrator should be certified to prepare the form and submit it for the company.
6. According to the Internal Revenue Code, either the plan sponsor, employer or plan administrator are allowed to sign the filing. However instructions provided with the Form 5500 states that forms that are not signed electronically by the plan administrator could be rejected and submitted to civil penalties under Title I of ERISA.
7. Social Security information should not be added as filings entered under the EFAST2 program will be posted on the Department of Labor website. Also if your plan is regarded a defined benefit plan, certain details from the Form 5500 should be posted

on your company's intranet for employee viewing.

8. For those filing extensions, a Form 5558 copy does not need to be attached to the Form 5500. Those who have already submitted a Form 5558 for the plan year would only need to check the right box on Line D. A hard copy of the Form 5558 must be maintained for the plan's permanent record.
9. Schedule SSA and E have been eliminated from the Form 5500. One needs to file the annual registration statement directly with the Internal Revenue Service.



10. A hard copy of the Form 5500 must be kept with the permanent records of the plan, with all the necessary signatures.

These tips should help make the new e-filing process smoother for all to use. Remember to register early on the EFAST2 website, <http://www.efast.dol.gov>, before starting the application process to avoid unnecessary errors. And finally be sure to read through the instructions and be aware of each person's role in completing the Form 5500.

On a lighter note, it is funny to note that while this e-filing system was implemented to save paper, one still needs to maintain a paper hard copy.

Does Your Builders Risk Policy Cover Soft Costs?

Work on the new office complex was progressing on schedule. The owner had lined up tenants for two-thirds of the space and was in talks with several others. The general contractor expected to finish construction on time. All that changed when fire broke out on the first floor late one afternoon. It spread from a stack of drywall awaiting installation to a pile of scrap plywood, where the wind picked up the flames and carried them to the structure. Drywall, insulation and plastic wiring all soon ignited. Firefighters were able to contain the blaze and limit the damage. However, it would now take an additional two months to complete the project because the contractors would have to clean up the debris from the fire and ensuing water damage, order replacement materials, and re-do much of the first floor's construction. The owner faced the certainty of thousands of dollars in lost rents and additional interest on the construction loans.



The owner and general contractor had purchased a builders risk insurance policy to cover damage to the project. They would have coverage for the lost rents and interest expenses

if the policy included special protection known as "soft costs coverage."

Soft costs are costs or reduced income resulting from a delay in a project's completion. They include expenses such as:

- Lost rents
- Additional interest on loans
- Additional real estate taxes
- Additional advertising costs
- Additional insurance premiums

Some builders risk policies have this coverage built in, while others provide it only if the insurance company adds it and charges an additional premium. The insurance covers the named insured for loss of income

and additional expenses that result from direct physical loss of or damage to the covered property. There is no coverage unless the peril causing the loss is one that the policy covers for direct damage. For example, the policy will cover losses caused by fire but not losses caused by faulty workmanship. The lost revenue and extra expenses must accrue during the period starting a specified number of days after construction would have been complete if no loss had occurred and the date construction actually was complete. Some policies limit this period to no more than six or 12 months.

Soft costs coverage may provide one limit of insurance that applies to all covered losses, or it may have separate limits for different types of losses. For example, one company's policy defines "soft costs" as loss of rental income, loss of gross earnings, additional interest and finance expenses, and additional expenses. The policy could have separate limits for each of these categories. A waiting period deductible applies, though some policies may apply a dollar deductible to losses that occur in a lump sum, such as legal fees. Some policies may also set a maximum amount that they will pay for any one month. They do not cover certain types of losses, such as those caused by strikes, breach of contract, design errors and omissions, lack of funds for repair or reconstruction, building laws and ordinances, and others.

The insurance company will determine the value of a loss by calculating the actual amount of income lost or extra expenses incurred during the delay period because of the delay. It will pay the amount of the loss or the amount of the insurance purchased, whichever is less.

A contractor should work with a professional insurance agent or broker experienced in arranging builders risk insurance. To make sure that the coverage terms and limits are appropriate, the contractor and broker should review the building contract, financing agreements, construction schedules, and other related documents. The type and amount of coverage will vary from one project to another, so it is important to give careful attention to each job's particular circumstances.

How Does a Workers' Comp Waiver of Subrogation Affect Your Business?

It is very common for the insurance requirements in a construction contract to include a provision requiring the subcontractor to waive all rights against the owner and general contractor for recovery of damages to the extent these damages are covered by the sub's workers' compensation and general liability or commercial umbrella liability insurance. Owners and general contractors insist on this provision because they want to protect themselves from being held liable for injuries to a subcontractor's employee. Typically, the contractor giving the waiver asks its insurance company to attach a "waiver of subrogation endorsement" to its workers' compensation policy.

The endorsement states that the insurance will company will not enforce its right to recover payments it makes to an injured worker from the person or organization listed on the endorsement. It applies only to the extent that the employer insured by the policy performs work under a written contract requiring the employer to obtain the insurance company's waiver. It does not directly or indirectly benefit anyone not listed on the endorsement. With this endorsement on the policy, the company cannot attempt to recover payments it made to an injured worker from the company listed on the endorsement, even if that company was responsible for the injury. Consequently, the loss impacts the employer's experience modification, probably increasing future premiums. In addition, the endorsement carries an additional premium for the employer, normally some percentage of the premium attributable to the job.

The endorsement and the waiver agreement in the contract do not bind the injured employee. He still has the ability to sue the owner and general contractor for his injuries. However, it is also common for construction contracts to require the subcontractor to defend and indemnify the owner and general contractor from any such suits. Therefore, it is probable that the employer will have to pay an additional premium for the endorsement, pay higher future workers' compensation premiums for the loss, and pay higher future liability insurance premiums because its policy will cover the other parties' liability.

For example, assume the sub's employee suffers serious injuries when tools and materials fall off a scaffold and strike him. He collects workers' compensation benefits for his medical costs and lost wages. The sub's workers' compensation policy includes the waiver of subrogation endorsement, so the insurance company cannot recover any of its payments. The worker sues the owner and general contractor for his pain and suffering. However, the contract requires the sub to cover the owner's and general's liability, so the sub's liability insurance pays for the pain and suffering lawsuit. The sub's insurance pays twice for the same injury to the same worker.

Owners and general contractors require waivers of subrogation for several reasons. Insurance consultants, brokers, and risk managers usually encourage them to require waivers. Waivers protect their liability insurance and reserve it for other claims. Because a waiver reduces potential liability losses, they become more attractive to liability insurance companies and probably pay lower premiums. Also, subcontractors often do not resist these requirements because they feel they lack negotiating leverage and their insurance companies are usually willing to provide the endorsement.

A few states have curbed the use of waivers of subrogation in their workers' compensation systems. At least four states have passed laws making the requirements unenforceable, and other states allow the employer to recover from the injured employee some of the proceeds of pain and suffering lawsuits.

In the majority of states that allow waivers, contractors should work with professional insurance agents experienced in providing construction insurance. They can suggest insurance companies that will offer the needed coverages at a reasonable cost and assist with contractual issues such as waivers of subrogation. Above all, contractors must read and understand their contracts so that their agreements do not become an ugly surprise after a loss.

