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Cafeteria Plans Election Change Matrix

Cafeteria plan elections must generally be made before a period of coverage begins and remain unchanged during the period of coverage. The period of coverage is usually the 12-month cafeteria plan year, but may be a shorter period of time for a newly eligible employee or a new cafeteria plan. Cafeteria plans may not have a plan year that exceeds 12 months in length. Election changes must be permitted annually with the exception of separate dental and vision plans. In informal guidance, the IRS has indicated that two year elections may be used for separate dental and vision plans.

Cafeteria plan election rules are a **MAXIMUM** – not a floor. Cafeteria plans may be more restrictive than the regulations, but not more expansive. Technically, a cafeteria plan may be written to prohibit any election change except for Health Savings Account (HSA) elections. Cafeteria plans must permit election changes at least monthly for HSA elections. Although other laws, such as HIPAA, require health plans to permit certain election changes, such as adding coverage for a new spouse following a marriage, an employer could require the change to be made on an after-tax basis. As a practical matter, virtually all cafeteria plans permit HIPAA special enrollment changes to be made on a pre-tax basis.

Carrier rules may be similar to IRS rules, but they are not identical. Group health insurance contracts almost universally permit employees to enroll themselves and/or family members when:

- They first become eligible;
- At annual enrollment;
- For HIPAA special enrollment (*not required for HIPAA-excepted benefits such as separate dental, vision, or health flexible spending accounts (FSAs)*); and
- To comply with a Qualified Medical Child Support Order (QMCSO).

Beyond those events, employers should check their insurance contracts to determine which events will permit an employee to enroll. Carrier rules for disenrollment are almost always more liberal. For example, an insurance contract may permit an employee to drop coverage at any time. While the carrier contract may permit disenrollment under the insurance contract, the IRS rules may not permit a change in the salary reduction amount. Employers need to keep both IRS and carrier rules (as well as any internal administrative concerns the employer may have) in mind when establishing, modifying, or using election change rules. Not adhering to the IRS rules could jeopardize the status of the cafeteria plan, whereas not adhering to carrier rules could result in unintended self-insurance. In general, the HIPAA special enrollment rules are binding on the employer's group health plan and the insurance company under an insured plan. Other rules, such as continuation during an FMLA leave and QMCSO rules, are binding on the employer and employer's group health plan, but not the insurance company.



However, in situations where an employer is required to provide certain coverage – such as a QMCSO – virtually all carriers will voluntarily follow the minimum requirements of those rules. Not as many are willing to be more liberal with respect to those rules or to permit all of the changes that the IRS will permit. Stop loss carriers are not required to provide HIPAA special enrollments because stop loss insurance is virtually never classified under state insurance law as health insurance. Some examples of situations where a carrier's underwriting rules may be more restrictive than the IRS (i.e., the IRS will permit a new election, the carrier will not):

- An employee with a child who is not enrolled in the employer's plan gets married and acquires a stepchild. The employee, new spouse, and new stepchild have HIPAA special enrollment rights. The employee's previously eligible child does not. The IRS rules would permit the employee to enroll the previously eligible child; many carrier contracts will not.
- An employee and spouse covered under an HMO get divorced and the employee wants to both drop coverage for the now ex-spouse and change to the PPO. The employee would almost always be required to drop HMO coverage for the ex-spouse who is no longer eligible, but the PPO carrier may not be willing to permit the employee to enroll in the PPO instead.
- An employee becoming eligible for Medicare upon reaching age 65 may want to enroll in Medicare and drop the employer's coverage for himself, but keep his 63-year-old spouse on the employer's plan. Under IRS rules, the employee could drop coverage for himself (but not his spouse). However, insurance contracts (including stop loss) almost never permit enrollment of a dependent when the employee is not enrolled. (There are some exceptions under retiree health plans and in situations involving a surviving spouse.)
- IRS rules permit a re-hired employee to be treated as a new employee with new elections if the employee's rehire date is more than 30 days after his termination date. Many carrier contracts have a definition of rehire that uses a 3 or 6 month time frame, and as a result, the insurance contract may only permit reinstatement of prior coverage.
- An employee wants to make a change in her coverage based on changes in her husband's employer's plan (or during her husband's employer's open enrollment). IRS rules would permit corresponding changes, but many carrier contracts will not.

A mid-year election change is NOT an open enrollment. An employee experiencing one of the permitted events may be permitted to make certain changes as the result of the event, but only certain changes. For example, if an employer adds or improves a dental plan mid-year, the employee may be able to enroll in the new or improved dental plan, but would not be permitted to make any changes to his medical election or his health FSA.

Before permitting an employee to make an election change during the plan year, the employer should ask the following questions:



- Is the requested change permitted by IRS? Is the event experienced by the employee included in the IRS list of events that would permit a new election? Does the event apply to the particular benefit the employee is asking to change (e.g., medical coverage or health FSA)?
- Does the election change satisfy the consistency rule? Generally, the event must affect eligibility for the benefit. For example, if an employee with two person major medical coverage is divorced, the now ex-spouse is no longer eligible for health coverage under the plan, and the employee may be permitted to change from two person to single coverage. It would not be consistent for the employee to drop all coverage since his eligibility has not changed -- only his ex-spouse's eligibility has changed.
- Does the cafeteria plan document permit the requested change? Does the plan impose any limitations on the election change that can be made for the event? Does the plan allow an employee to elect to commence benefits midyear when the employee was not previously in any of the cafeteria plan benefits?
- Does the plan document or insurance policy governing the applicable benefit allow the requested election change? For example, does the medical carrier (or stop loss carrier) permit an employee to enroll under their contract mid-year if it's during the spouse's employer's open enrollment period?
- Has there been proper documentation? Has the participant provided a signed or electronic certification that the event occurred or that the change is consistent with the event? If coverage is being dropped because of a change in status that results in a gain in eligibility under another plan, has the participant provided any certification that coverage has been or will be obtained under the other plan? Is there any reason to believe that any certification is not correct?
- Does the election change comply with time limits outlined in the plan? Is the request for a prospective change? Or is it a permitted retroactive election change for a HIPAA special enrollment for birth, adoption, or placement for adoption?

A matrix outlining permitted election changes under IRS rules is contained in several charts on the following pages. Chart #1 contains change in status rules that apply to all health plans, including health FSAs. Chart #2 shows change in cost or coverage rules that apply to health plans other than health FSAs. Chart #3 shows the rules that apply to Dependent Care Assistance Plans (DCAPs). For all charts, the term "spouse" includes same-sex spouses whose marriage is recognized by the federal government. The children of federally recognized same-sex spouses have the same enrollment rights as the children of opposite-sex spouses.

Following the charts are sections that address the rules for life insurance and disability insurance and domestic/civil union partners and their children.

Note: *This document does not include any of the rules for adoption assistance or 401(k) plans.*



Chart #1: Election Changes for Healthcare Plans (including health FSA)

Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
HIPAA Special Enrollments (not required for HIPAA excepted benefits)					
Marriage	<ul style="list-style-type: none"> • Enrollment of employee • Enrollment of new spouse • Enrollment of newly eligible dependents • Drop of coverage for dependents if enrolling in spouse's plan • Drop of coverage for employee if enrolling in spouse's plan 	Required	<ul style="list-style-type: none"> • Enrollment in FSA • Increase in dollar election • Decrease in dollar election (if newly eligible under spouse's plan) • Drop in coverage (if newly eligible under spouse's plan) 	<p>HIPAA special enrollment rights apply to the employee, new spouse, and newly eligible dependents, but not previously eligible dependents.</p> <p>Entering into a domestic partnership is not a marriage and does not create a HIPAA special enrollment right. However, see increase in dependents on page 16 and the rules for domestic partners on page 16.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Birth, adoption, or placement for adoption	<ul style="list-style-type: none"> • Enrollment of employee • Enrollment of spouse 	Required	<ul style="list-style-type: none"> • Enroll in FSA • Increase in dollar election 	<p>HIPAA special enrollment rights do not apply to previously eligible dependents.</p> <p>Children born/adopted/placed with a domestic partner have HIPAA special enrollment rights</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
	<ul style="list-style-type: none"> Enrollment of newly born/adopted/placed child 			<p>(as will the employee), but not the domestic partner.</p> <p>Coverage must be retroactive to the date of birth/adoption.</p>	
<p>Loss of coverage under spouse's plan (For example:</p> <ul style="list-style-type: none"> Divorce/legal separation Death Spouse's termination of employment Spouse's change in employment status) 	<ul style="list-style-type: none"> Enrollment of employee Enrollment of individual losing coverage (may be subject to waiver restrictions) 	Required	<ul style="list-style-type: none"> Enrollment in FSA Increase in dollar election 	<p>HIPAA special enrollment is available to the employee and other individuals who lose eligibility under the spouse's plan</p> <p>An employer is permitted to limit special enrollment rights to individuals who actually were enrolled in another plan at the time of the coverage waiver. To enforce this provision, the plan may require a written statement from an employee who is waiving coverage that the other coverage is the reason for the waiver. If the employer uses and communicates this requirement and the employee does not provide it, the plan is not required to offer a HIPAA special enrollment if the other coverage is lost.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
<p>Loss of coverage under another employment based group health plan (e.g., 26-year old employee loses coverage under parent's plan, domestic partnership ends, or employee's 22-year old child terminates employment)</p>	<ul style="list-style-type: none"> • Enrollment of employee • Enrollment of individual losing coverage (may be subject to waiver restrictions) 	Required	<ul style="list-style-type: none"> • Enrollment in FSA • Increase in dollar election 	<p>HIPAA special enrollment based on the loss of other coverage is available to the employee and other individuals who are eligible under the plan, including domestic and civil union partners and their children.</p> <p>An employer is permitted to limit special enrollment rights to individuals who actually were enrolled in another plan at the time of the coverage waiver. To enforce this provision, the plan may require a written statement from an employee who is waiving coverage that the other coverage is the reason for the waiver. If the employer uses and communicates this requirement and the employee does not provide it, the plan is not required to offer a HIPAA special enrollment if the other coverage is lost.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Loss of eligibility for individual health insurance (e.g., insurer drops individual product line, drops specific plan design such as</p>	<ul style="list-style-type: none"> • Enrollment of employee • Enrollment of individual losing coverage (may be 	Required	<ul style="list-style-type: none"> • Enrollment in FSA • Increase in dollar election 	<p>HIPAA special enrollment based on the loss of other coverage is available to the employee and other individuals who are eligible under the plan, including domestic and civil union partners and their children.</p> <p>An employer is permitted to limit special enrollment rights to individuals who actually</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
PPO, drops out of individual market, or stops offering a product the end of the year)	subject to waiver restrictions)			were enrolled in another plan at the time of the coverage waiver. To enforce this provision, the plan may require a written statement from an employee who is waiving coverage that the other coverage is the reason for the waiver. If the employer uses and communicates this requirement and the employee does not provide it, the plan is not required to offer a HIPAA special enrollment if the other coverage is lost. Loss of coverage for reasons such as failure to pay premium or fraud does not create a special enrollment right.	
Exhaustion of COBRA coverage at end of 18, 29, or 36 months	<ul style="list-style-type: none"> Enrollment of employee Enrollment of individual losing coverage (may be subject to waiver restrictions) 	Required	<ul style="list-style-type: none"> Enrollment in FSA Increase in dollar election 	HIPAA special enrollment based on the loss of other coverage is available to the employee and other individuals who are eligible under the plan, including domestic and civil union partners and their children. The HIPAA special enrollment right is only available as the result of exhaustion of the maximum COBRA duration. Voluntary termination does not give the individual special	<input type="checkbox"/> Yes <input type="checkbox"/> No

Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
				<p>enrollment rights even if the individual is losing free COBRA coverage.</p> <p>For example, if a former employer does not charge for COBRA for three months after a layoff, there is no special enrollment with a new employer at the end of that three-month period.</p>	
Loss of Medicaid eligibility	<ul style="list-style-type: none"> • Enrollment of employee • Enrollment of individual losing coverage 	Required	Unclear whether permitted	Employees must be given at least 60 days to exercise special enrollment rights and be permitted to change coverage options.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Loss of SCHIP eligibility	<ul style="list-style-type: none"> • Enrollment of employee • Enrollment of individual losing coverage 	Required	Unclear whether permitted	Employees must be given at least 60 days to exercise special enrollment rights and be permitted to change coverage options.	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
Gain Medicaid premium assistance	<ul style="list-style-type: none"> • Enrollment of employee • Enrollment of dependent 	Required	Unclear whether permitted	<p>Employees must be given at least 60 days to exercise special enrollment rights and be permitted to change coverage options.</p> <p>If already enrolled, employee may be able to reduce salary reduction election to reflect lower employer contribution.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Gain SCHIP premium assistance	<ul style="list-style-type: none"> • Enrollment of employee • Enrollment of dependent 	Required	Unclear whether permitted	<p>Employees must be given at least 60 days to exercise special enrollment rights and be permitted to change coverage options.</p> <p>If already enrolled may be able to reduce salary reduction election to reflect lower employer contribution.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
Status Changes – these are the only categories of status changes that are permitted					
Divorce, annulment, legal separation, and/or death of spouse	<ul style="list-style-type: none"> Drop of coverage for spouse losing eligibility Drop of coverage for stepchildren losing eligibility 	Yes	<ul style="list-style-type: none"> Decrease dollar election End of enrollment 	<p>Legal separation and annulment are events permitting a change only in states that recognize them.</p> <p>In the event of divorce, the employee's children do not lose eligibility under parents' plans, but the employee's stepchildren would generally lose eligibility.</p> <p>An employee enrolled in the spouse's group health plan who loses coverage under the spouse's plan may be eligible for a HIPAA special enrollment – see page 16.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Increase in the number of dependents other than birth, adoption, or placement for adoption	<ul style="list-style-type: none"> Enrollment of newly eligible dependent(s) 	No	<ul style="list-style-type: none"> Enrollment Increase in dollar election 	<p>Newly eligible dependent and other dependents that previously were not covered (under the tag-along rule) may be enrolled under IRS rules.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Decrease in number of dependents (For example: <ul style="list-style-type: none"> Death 	<ul style="list-style-type: none"> Drop of coverage for dependent losing eligibility 	No	<ul style="list-style-type: none"> Decrease in dollar election End of enrollment 	<p>If the event causing loss is a COBRA qualifying event and the child is the employee's dependent, the employee may make a change in the salary reduction amount to pay for COBRA coverage pre-tax.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
<ul style="list-style-type: none"> Loss of eligibility under the plan – e.g., child reaches age 26) 					
<p>Gain in eligibility due to employee's change in employment status</p> <ul style="list-style-type: none"> Class (e.g., salaried to hourly) Hours (e.g., part-time to full-time) Union (e.g., non-union to union) 	<ul style="list-style-type: none"> Enrollment of newly eligible employee after allowing new plans to be selected 	Select from newly available options	<ul style="list-style-type: none"> Enrollment if newly eligible 	May only change election where eligibility for a benefit/plan affected (i.e., if different medical options for salaried and hourly or different contributions, make new elections). If eligibility has not changed (i.e., same FSA plan for salaried and hourly), no FSA change permitted.	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Loss of eligibility due to employee's change in employment status</p> <ul style="list-style-type: none"> Termination Strike/lock out Class (e.g., hourly to salaried) 	<ul style="list-style-type: none"> Cancellation of coverage 	No (see comments)	<ul style="list-style-type: none"> End of enrollment 	However, if the change in employment status results in eligibility for a new or different plan (or new coverage option), then employee can select the new or different plan.	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
<ul style="list-style-type: none"> Hours (e.g., full-time to part-time) Union (e.g., union to non-union) 					
<p>Reduction in hours of service, where employee expected to average less than 30 hours per week</p>	<ul style="list-style-type: none"> Revocation of coverage 	No	<ul style="list-style-type: none"> No change permitted 	<p>The employee must be in a position that was expected to average at least 30 hours of service per week and there was a change so that the employee will reasonably be expected to average less than 30 hours of service per week. Eligibility for the employer's health plan need not be affected by the change in the expected hours of service.</p> <p>The cancellation of coverage under the employer's health coverage corresponds to the intended enrollment of the employee (and any related individuals) in another plan that provides minimum essential coverage. Coverage under the new plan must be effective no later than the first day of the second month following the month that the employer coverage is cancelled.</p> <p>Employer may rely on a reasonable representation of an employee and related</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
				individual who have enrolled or intent to enroll in another plan.	
Employee seeks to enroll in a QHP when the employee is eligible for a Marketplace Special enrollment	<ul style="list-style-type: none"> Revocation of coverage 	No	<ul style="list-style-type: none"> No change permitted 	<p>An employee seeking to revoke his election to enroll in a Marketplace QHP may do so if the employee is eligible for Marketplace Special Enrollment period. The revocation of the election for employer coverage must correspond to the intended enrollment of the employee (and any related individuals) in a QHP through the Marketplace. Coverage under the Marketplace QHP must be effective no later than the day immediately following the last day the original coverage was revoked. For additional insight, on Marketplace Special enrollment, please refer to the following link - https://www.healthcare.gov/coverage-outside-open-enrollment/special-enrollment-period/</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
Employee seeks to enroll in a QHP during the Marketplace's annual open enrollment	<ul style="list-style-type: none"> Revocation of coverage 	No	<ul style="list-style-type: none"> No change permitted 	The revocation of the election for employer coverage must correspond to the intended enrollment of the employee (and any related individuals) in a QHP through the Marketplace. Coverage under the Marketplace QHP must be effective no later than the day immediately following the last day the original coverage was revoked.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Rehire employee within 30 days of termination⁽¹⁾	<ul style="list-style-type: none"> Reinstatement of old election Denial of reinstatement until the next plan year 	No	<ul style="list-style-type: none"> Reinstatement of prior coverage Denial of reinstatement until the next plan year 	If another event occurs that permits a change (which must be specified in the plan), then rehired employee may be able to make new selections.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Rehire employee 30 or more days after termination	<ul style="list-style-type: none"> Enrollment employee, allowing new plan selections Reinstatement of previous election 	Yes	<ul style="list-style-type: none"> Enrollment Reinstatement Denial of reinstatement until the next plan year 	After 30 days, rehired employees are treated as new employees under the cafeteria plan election rules.	<input type="checkbox"/> Yes <input type="checkbox"/> No

⁽¹⁾ The ACA's Employer Shared Responsibility requirement includes rules about counting hours for rehired employees. In general, employers must count hours for rehired employees unless the employee is rehired after a break in service of at least 13 weeks (26 weeks for an academic employee). An employer that denies reinstatement for rehired employees could be faced with an Employer Shared Responsibility penalty if an employee who is not reinstated to health insurance is determined to be a full-time employee under the ACA's rules and receives premium assistance and/or cost sharing reduction under a QHP purchased in a Marketplace.



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
	<ul style="list-style-type: none"> Denial of reinstatement until the next plan year 				
Gain in eligibility under another plan because spouse or dependent commences employment	<ul style="list-style-type: none"> Drop of coverage employee if enrolls in the other plan Drop of coverage for spouse, dependent, and/or other family members enrolling in the other plan 	No	<ul style="list-style-type: none"> Decrease in dollar election End of enrollment 	Corresponding changes required. Employee may not drop coverage unless employee (and/or family members) actually enrolls in the other plan.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Dependent gains eligibility under employer's plan (e.g., 27-year old child who is a dependent becomes a full-time student)	<ul style="list-style-type: none"> Enrollment of newly eligible dependent 	No	<ul style="list-style-type: none"> Enrollment Increase in dollar election 		<input type="checkbox"/> Yes <input type="checkbox"/> No
Change in residence that causes employee to gain eligibility	<ul style="list-style-type: none"> Enrollment of newly eligible employee and dependents 	No	<ul style="list-style-type: none"> No change allowed 	Previously eligible dependents may be added under the tag-along rule in addition to newly eligible spouse and dependents.	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
(e.g., employee moves into an HMO's service area)				Employee may only enroll in the plan he/she is newly eligible for. No other changes permitted.	
Change in residence that causes employee to lose eligibility (e.g., employee moves out of an HMO's service area)	<ul style="list-style-type: none"> Drop of coverage if moving out of network area Change to another similar option 	Yes	<ul style="list-style-type: none"> No change allowed 	HIPAA special enrollment rights may also apply due to a loss in coverage. See loss of coverage on page 16.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Change in residence that causes dependent to gain eligibility	<ul style="list-style-type: none"> Addition of newly eligible dependent 	No	<ul style="list-style-type: none"> No changes permitted 		<input type="checkbox"/> Yes <input type="checkbox"/> No
Change in residence that causes dependent to lose eligibility	<ul style="list-style-type: none"> Drop of coverage for dependent that loses eligibility 	No	<ul style="list-style-type: none"> No changes permitted 	HIPAA special enrollment rights may also apply due to a loss of coverage. See loss of coverage on page 16.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Commencement of <u>paid</u> leave of absence with loss of eligibility	<ul style="list-style-type: none"> Cancellation of coverage (reinstate on return) 	No	<ul style="list-style-type: none"> End of enrollment 	May cancel coverage. Paid leave includes periods when an employee is receiving replacement income such as salary continuation, short term disability, and long term disability benefits.	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
Commencement of <u>paid</u> leave of absence <u>without loss of eligibility</u> .	<ul style="list-style-type: none"> No change 	No	<ul style="list-style-type: none"> No changes permitted 	Because there is no loss of eligibility, no changes are permitted.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Commencement of <u>unpaid</u> leave of absence (non-FMLA) with loss of eligibility	<ul style="list-style-type: none"> Cancellation of coverage (reinstate on return) 	No	<ul style="list-style-type: none"> End of enrollment 	May cancel coverage.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Return after <u>paid</u> leave of absence (gain eligibility)	<ul style="list-style-type: none"> Reinstatement of previous coverage 	No	<ul style="list-style-type: none"> Reinstatement with blended dollar election Enroll with new dollar amount (short period) 	May reinstate if eligibility was lost upon commencement of leave. FSA may reinstate with blended dollar election or new short period.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Return after <u>unpaid</u> leave of absence (non-FMLA) (gain eligibility)	<ul style="list-style-type: none"> Reinstatement of previous coverage 	No	<ul style="list-style-type: none"> Reinstatement if eligibility was lost Enroll with new dollar amount (short period) 	May reinstate if eligibility was lost upon commencement of leave. FSA may reinstate with new dollar amount – short period.	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
Government Programs/Legal					
Judgment, decree, QMCSO, NMSN, or other legal proceeding	<ul style="list-style-type: none"> Adherence to court order 	Must adhere to court order	<ul style="list-style-type: none"> Adherence to court order 	Under QMCSO or NMSN, a plan must enroll child (and employee if necessary) in the plan option specified in the Order or Notice.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Eligibility for Medicare	<ul style="list-style-type: none"> No change permitted 	No	<ul style="list-style-type: none"> No change permitted 	No change based on eligibility for Medicare.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Entitlement to Medicare	<ul style="list-style-type: none"> Drop of coverage for affected individual 	No	<ul style="list-style-type: none"> Decrease in dollar amount End of enrollment 	Requires actual enrollment in Medicare, not just gain in eligibility.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Loss of Medicare Eligibility	<ul style="list-style-type: none"> Enrollment of affected individual 	Yes	<ul style="list-style-type: none"> Enrollment Increase in dollar election 	Not a common event. Could occur if individual entitled to Medicare on the basis of disability or ESRD after a specified recovery period. Could allow employee to add coverage of family members as well under tag-along rule.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
Gain eligibility for Medicaid (not gain of premium assistance)	<ul style="list-style-type: none"> Drop coverage for affected individual 	No	<ul style="list-style-type: none"> No change permitted 	Gain of Medicaid with premium assistance is a HIPAA special enrollment, see page 6.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Gain eligibility for SCHIP (not gain of premium assistance)	<ul style="list-style-type: none"> No change permitted 	No	<ul style="list-style-type: none"> No change permitted 	Gaining eligibility for SCHIP premium assistance is a HIPAA special enrollment, see page 6.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Gain eligibility for premium assistance in Marketplace	<ul style="list-style-type: none"> No change permitted 	No	<ul style="list-style-type: none"> No change permitted 	Under current regulations, this is not a status change that would permit an election change.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Drop Medicare Coverage (not loss of eligibility)	<ul style="list-style-type: none"> No change permitted 	No	<ul style="list-style-type: none"> No change permitted 	This is not a change in status that would permit a new election unless there is a loss of eligibility for Medicare. Voluntarily terminating coverage by discontinuing premium payments is not a loss of eligibility.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Lose eligibility for premium assistance in Marketplace	<ul style="list-style-type: none"> No change permitted 	No	<ul style="list-style-type: none"> No change permitted 	Under current regulations, this is not a status change that would permit an election change.	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
Commencement of <u>paid</u> FMLA leave of absence	<ul style="list-style-type: none"> Continuation of existing election 	No	<ul style="list-style-type: none"> Continuation of existing election 	Unless another event occurs, such as birth of a child, employees may not make any changes during a paid FMLA leave. Paid leave includes periods when an employee is receiving replacement income such as salary continuation, short term disability, and long term disability benefits.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Commencement of <u>unpaid</u> FMLA leave of absence	<ul style="list-style-type: none"> Continuation existing coverage Cancellation of coverage (reinstate on return) 	No	<ul style="list-style-type: none"> End of enrollment 	If coverage is cancelled, the employee must be permitted to reinstate coverage upon return from unpaid FMLA leave.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Return after <u>paid</u> FMLA leave of absence	<ul style="list-style-type: none"> Continuation of coverage Reinstatement of previous coverage 	No	<ul style="list-style-type: none"> Continuation of coverage Reinstatement of previous coverage Election of a pro-rata reduction in dollar election 	No change permitted after returning from a paid leave unless another event which would permit a change occurs.	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Changes to Salary Reduction Agreement to Reflect:			Comments	Event Applies to the Plan
	Health Plan	Ability to Change Coverage Option (e.g., HMO, PPO)	Health FSA		
Return after <u>unpaid</u> FMLA leave of absence	<ul style="list-style-type: none"> Continuation of coverage Reinstatement of previous coverage 	No	<ul style="list-style-type: none"> Reinstatement with prior dollar election Election of a pro-rata reduction in dollar election 	<p>Employer may require an employee to be reinstated to his or her election upon return from leave if employees who return from a non-FMLA leave are required to be reinstated in their elections.</p> <p>Employee may make new election only if another event, such as birth of a child, would permit a new election.</p> <p>For health FSA, employee has the choice to reinstate prior election or pro-rated reduction. For example, an employee with a two-month unpaid FMLA and a \$1,200 election amount could continue the \$1,200 or \$1,000 election (10/12 x \$1,200).</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Chart #2: Election Changes for Healthcare Plans **Except** Health FSA

No Health FSA Changes are Permitted Based on Cost or Coverage Change

Event	Permitted Change(s) to Reflect:	Ability Change to Coverage Option	Comments	Event Applies to the Plan
Change in Cost				
Insignificant increase	<ul style="list-style-type: none"> Automatic increase in cost 	No	A cost increase may be the result of employee action (e.g., switching from full-time to part-time while remaining eligible for plan coverage) or employer action (e.g., a change in the amount of contributions required from employees). The plan document must require the automatic election change in the event of an insignificant cost change.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Insignificant decrease	<ul style="list-style-type: none"> Automatic decrease in cost 	No	A cost decrease may be the result of employee action or employer action. The plan document must require the automatic election change in the event of an insignificant cost change.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Significant increase	<ul style="list-style-type: none"> Payment of increased costs Election of another similar, less expensive plan Drop of coverage if similar plan is not available 	Yes, but limited	<p>The IRS has not provided guidance on what is a “significant” change in coverage. Employers must look at the facts and circumstances to determine if the increase is significant.</p> <p>Not an “open” enrollment. Only specified changes permitted. For example, if medical cost increased employee may select less expensive medical. The employee may not make other changes such as drop dental coverage.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Change(s) to Reflect:	Ability Change to Coverage Option	Comments	Event Applies to the Plan
Significant decrease	<ul style="list-style-type: none"> • Enrollment • Payment of decreased cost • Enrollment in a more expensive option 	Yes, but limited	<p>The IRS has not provided guidance on what is a “significant” change in coverage. Employers must look at the facts and circumstances to determine if the decrease is significant.</p> <p>Not an “open” enrollment. Only specified changes permitted. For example, if medical cost decreases employee may select a more expensive medical option. The employee may not make other changes such as add dental coverage.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Change in Coverage				
Plan coverage improvement (e.g., addition of a new option under the plan)	<ul style="list-style-type: none"> • Enrollment • Election of improved plan option 	Yes, but limited	<p>Employees may enroll in the option even if they did not previously enroll in another plan option.</p> <p>May enroll dependent(s) not previously covered.</p> <p>Employees enrolled in an existing option may change to the new option.</p> <p>Not an open enrollment. No other changes permitted. For example, if a new option is added to the medical plan, employees may not make changes to other health coverage such as dental or vision.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
New plan	<ul style="list-style-type: none"> • Enrollment in new plan 	Yes, but limited	<p>May enroll employees and dependents in the new plan.</p> <p>Not an open enrollment. No other changes permitted. For example, if an employer offers dental for the first time, employees may enroll in the dental plan, but may not make changes in other plans such as a new medical plan election.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Change(s) to Reflect:	Ability Change to Coverage Option	Comments	Event Applies to the Plan
Significant coverage curtailment without loss of coverage	<ul style="list-style-type: none"> • Revocation of election • Election of coverage, on a prospective basis, that provides similar coverage 	Yes, but limited	<p>A significant curtailment in coverage is defined as an overall reduction in coverage provided to participants under the plan so as to constitute reduced coverage to participants generally. This includes: a significant increase in employees' plan deductibles, copayments, or out-of-pocket cost-sharing limits.</p> <p>Might involve substantial changes to providers in a network (e.g., 1/3 of the hospitals leave the network), but would not be available for situations such as the loss of a single physician even if that physician is the employee's primary care physician.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Significant coverage curtailment with loss of coverage	<ul style="list-style-type: none"> • Election of a similar plan • Drop coverage, but only if a similar plan is not available 	Yes, but limited	<p>Curtailment must apply overall and be considered a virtual loss of coverage.</p> <p>This includes: elimination of a benefits option or an HMO ceasing to be available in the coverage area. It could also include reduction in benefits for a specific condition or treatment that participant is undergoing.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Another employer's open enrollment	<ul style="list-style-type: none"> • Drop coverage due to enrollment in spouse's plan • Enrollment due to drop of coverage in spouse's plan 	Yes, but limited	<p>Usually this is related to a spouse's open enrollment. Corresponding changes required (e.g., enrollment in spouse's plan if dropping employer's plan).</p> <p>Other employer's plan must be a cafeteria plan and have a different plan year.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Chart #3: Election Changes for Dependent Care Assistance Plans (DCAPs)

Event	Permitted Change(s) to Reflect	Comments	Event Applies to the Plan
Change in dependent care provider (e.g., change in residence affects available care providers)	<ul style="list-style-type: none"> • Enrollment in DCAP • Increase in dollar election • Decrease in dollar election • End of enrollment in DCAP 	<p>Consistency rule applies (e.g., employee may change salary reduction to reflect enrollment if a new provider becomes available or the end of enrollment if losing existing provider).</p> <p>Election change is permitted even if provider switches from day care center to relative.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Change in the cost of day care	<ul style="list-style-type: none"> • Increase in dollar election • Decrease in dollar election 	<p>Election change is permitted only if the provider is not related to the employee.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Change in the number of hours of dependent care and care costs	<ul style="list-style-type: none"> • Increase in dollar election • Decrease in dollar election 	<p>Consistency rule would apply (e.g., an employee could increase an election if she increased her work hours and needed more hours of day care for her child).</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Marriage	<ul style="list-style-type: none"> • Enrollment in DCAP • Increase in dollar election • Decrease in dollar election • End of enrollment in DCAP 	<p>Enrolling or increasing the dollar election can occur to accommodate newly qualified dependents.</p> <p>Ending enrollment may be needed if new spouse is not employed.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Change(s) to Reflect	Comments	Event Applies to the Plan
Divorce, annulment, or legal separation	<ul style="list-style-type: none"> • Enrollment in DCAP • Increase in dollar election • Decrease in dollar election • End of enrollment in DCAP 	Enrolling or increasing the dollar election can occur to accommodate newly qualified dependents. For example, employees' ex-spouse begins employment and can no longer provide care while the employee works.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Birth or adoption	<ul style="list-style-type: none"> • Enrollment in DCAP • Increase in dollar election 	An increase in the dollar election can occur to accommodate newly eligible dependents.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Child attains the age of 13	<ul style="list-style-type: none"> • Decrease in dollar election • End of enrollment in DCAP 	<p>Child ceases to be a qualified dependent on his/her 13th birthday. After age 13, the child must be physically or mentally incapable of self-support to be a qualified dependent.</p> <p>A decrease in dollar election is permitted to account for a dependent losing eligibility. May end enrollment if no more eligible dependents.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
Child over the age of 13 becomes disabled	<ul style="list-style-type: none"> • Enrollment in DCAP • Increase in dollar election 	After age 13, the child must be physically or mentally incapable of self-support to be a qualified dependent.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Previously disabled child over the age of 13 recovers from the disability	<ul style="list-style-type: none"> • End of enrollment in DCAP • Decrease in dollar election 	A decrease in dollar election is permitted to account for a dependent losing eligibility. May end enrollment if no more eligible dependents.	<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Change(s) to Reflect	Comments	Event Applies to the Plan
Change in employment status that causes the employee to gain eligibility (e.g. part-time to full-time)	<ul style="list-style-type: none"> • Enrollment in DCAP • Increase in dollar election 	Employee may gain eligibility for dependent care or may have increased need (e.g., such as a change from part-time to full-time).	<input type="checkbox"/> Yes <input type="checkbox"/> No
Change in employment status or termination that causes an employee to lose eligibility (e.g., unpaid leave, strike, lock out, layoff)	<ul style="list-style-type: none"> • End of enrollment in DCAP • Decrease in dollar election 	Employee will have no qualified expenses during a leave of absence (paid or unpaid).	<input type="checkbox"/> Yes <input type="checkbox"/> No
Begin FMLA or other leave (paid or unpaid)	<ul style="list-style-type: none"> • Decrease in dollar election • End of enrollment in DCAP 	Employee will have no qualified expenses during a leave of absence (paid or unpaid).	<input type="checkbox"/> Yes <input type="checkbox"/> No
Return from FMLA or other leave (paid or unpaid)	<ul style="list-style-type: none"> • Reinstatement of coverage 		<input type="checkbox"/> Yes <input type="checkbox"/> No
Return from strike, lock out, or layoff	<ul style="list-style-type: none"> • Reinstatement of coverage 		<input type="checkbox"/> Yes <input type="checkbox"/> No



Event	Permitted Change(s) to Reflect	Comments	Event Applies to the Plan
Rehire employee within 30 days	<ul style="list-style-type: none"> • Reinstatement of prior election • Denial of reinstatement until the next plan year 		<input type="checkbox"/> Yes <input type="checkbox"/> No
Rehire employee after 30 days or more	<ul style="list-style-type: none"> • Selection of new election • Reinstatement of prior election • Denial of reinstatement until the next plan year 		<input type="checkbox"/> Yes <input type="checkbox"/> No
Commencement of employment by spouse	<ul style="list-style-type: none"> • Enrollment in DCAP • Increase in dollar election 	Enrolling or increasing the dollar election can occur to accommodate newly qualified dependents.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Loss of eligibility under another plan due to spouse's termination or change in employment status	<ul style="list-style-type: none"> • Enrollment in DCAP • Increase in dollar election 	Employee may choose to enroll if coverage was provided under the spouse's DCAP.	<input type="checkbox"/> Yes <input type="checkbox"/> No



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Election Changes for Life and Disability Insurance

Most changes in status permit election changes for life and disability benefits, even when eligibility is not affected, to reflect the following: enrollment of employee, increase in coverage, decrease in coverage, or end of enrollment. For example, in the event of marriage, an employee may either increase or decrease her life insurance coverage. In the event of a divorce, she may either increase or decrease her life insurance. However, when an employee is rehired within 30 days, the only permitted changes are reinstatement of the prior election or denial of reinstatement until the next plan year. When an employee is rehired after 30 days, the following changes are permitted: selection of new plans, reinstatement of a prior election, or denial of reinstatement until the next plan year.

Note: Life or disability insurance that is provided on an after-tax basis outside the cafeteria plan is not subject to the IRS election change rules. Carrier rules will apply.

Rules for Domestic/Civil Union Partners and their Children

In general, the rules for a domestic/civil union partner depend on whether the domestic/civil union partner is the employee's tax dependent. If the domestic/civil union partner is the employee's tax dependent, then the rules for dependents included in Charts #1, #2, and #3 above would apply. If the domestic/civil union partner is not the employee's tax dependent, then coverage for the domestic/civil union partner must be paid for on an after-tax basis.

The children of a domestic/civil union partner are almost never the employee's tax dependent. The tax code definition of a tax dependent includes a qualifying child and a qualifying relative. A domestic/civil union partner's child would be the domestic partner's qualifying child, not the employee's qualifying child. One of the requirements for being a qualifying relative is that the individual not be another person's qualifying child. As a result, unless the employee has legally adopted the domestic/civil union partner's child, the child will not be the employee's tax dependent.

HIPAA special enrollment rights do not apply upon entering a domestic/civil union partnership. Special enrollment rights would be available based on the birth, adoption, or placement for adoption of a child by the employee's domestic/civil union partner. In the event of birth/adoption/placement by the employee's domestic partner, the child(ren) and employee, but not the domestic/civil union partner, would have a special enrollment right. HIPAA special enrollment rights do apply to dependents that are defined as dependents under the terms of the plan who lose other coverage (health insurance or coverage under an employer's health plan) – including domestic/civil union partners and their children even those that are not the employee's tax dependents.



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For domestic/civil union partners who are not the employee's tax dependent (and their children), no cafeteria plan changes are permitted. However, where there is a change in eligibility for coverage, corresponding election changes are virtually always permitted in the component benefit plans offered under the cafeteria plan, but the changes must be made on an after-tax basis.