

Employee **Benefits** Corporation



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Compliance Buzz

Tax Reform and Tax Advantaged Benefits

After months of debate on tax reform, Congress passed the "Tax Cuts and Jobs Act" (H.R. 1) to overhaul the tax code. Items of interest for tax advantaged benefits include the dependent care flexible spending account, adoption assistance, education assistance programs, transportation plans, and the individual mandate under the ACA.

With implementation starting in January, the impact of "Tax Cuts and Jobs Act" would be felt all throughout early 2018. Tax reform legislation removes the ACA's individual mandate requirement for months beginning after 12/31/18 and onward. [Read more >](#)



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Health Benefits 101



What are Documentation



Review of the Basics
“Use it or Lose it” and Forfeiture Issues
HSA’s and Limited Health FSAs
Cash in Lieu of Benefits/Flex Credits
Employer Contributions
Nondiscrimination Testing

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IRS regulations cover a wide variety of Plan designs and options for employers.

This webinar focuses on options that are supported by the BESTflex Plan administered by Employee Benefits Corporation.

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Review of the Basics

Review of the Basics

“ What is a Cafeteria Plan?

- . Choice between tax-free benefit and taxable compensation
- . Established under IRC § 125
- . Provides employer and employee tax break
- . Elections are irrevocable for most choices
- . Must be established in writing
- . Employees direct employer how to spend money on benefits – it's employer's money

Review of the Basics

“ Eligible benefits

- . Qualified Insurance Premiums (examples)
 - “ Group health coverage (medical, dental, vision, illness, prescription)
 - “ Employee-only Group Term Life (up to \$50,000)
 - “ Disability
 - “ Individual insurance except major medical
 - “ Voluntary insurance - but consider ERISA

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Review of the Basics

“ Eligible benefits

- . ACA prohibits reimbursement or payment of individual major medical insurance
 - “ Restriction applies to “active employees”
 - “ No reimbursement or direct payment of individual medical insurance premiums
- . Can use separate individual insurance reimbursement account for qualified non-medical individual insurance premiums

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Review of the Basics

“ Eligible benefits

- May reimburse or pay COBRA premiums pre-tax if Plan Document allows when:
 - “ There is a reduction in hours if employee remains eligible for Cafeteria Plan
 - “ Child ages off Plan when child is under 26
 - “ Employee is on COBRA from former employer and is eligible for Cafeteria Plan – seems permitted but may create a 1-person group health plan with unique COBRA rights

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Review of the Basics

“ Eligible benefits

- Flexible Spending Arrangements (FSAs)
 - “ Health Care FSA
 - “ Dependent Care FSA (DCAP)
 - “ Individual Premium FSA
 - Cannot reimburse individual major medical coverage

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Review of the Basics

“ Eligible benefits

- Health Savings Account (HSA) contributions to HSA in employee’s name
- Paid Time Off buy/sell
- Additional taxable payment for waiving benefits (Cash-in-Lieu of benefits)

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Review of the Basics

“ Ineligible under Cafeteria Plan

- Educational assistance
- Transportation Reimbursements
- Health Reimbursement Arrangements

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“Use it or Lose it” and Forfeiture Issues

“Use it or Lose it” and Forfeiture Issues

“ Uniform Coverage Rule

- Health Care FSA is subject to “Uniform Coverage”
 - “ Acts as a small, self-funded health plan
- Payroll contribution is a “premium” payment
- “Maximum benefit” is election amount
- Participant may use entire coverage on Day 1
- Excess premiums are not returned even if the full premiums are never recouped

“Use it or Lose it” and Forfeiture Issues

” Uniform Coverage Rule

- . Employer risk
 - ” Employee can exhaust entire account and leave employment
 - ” Risk is relatively low
 - . \$2,650 statutory maximum reduces risk
 - . Employer may set lower maximum
 - . Loss is usually offset by forfeitures

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“Use it or Lose it” and Forfeiture Issues

” Uniform Coverage Rule

- . Employer risk
 - ” COBRA liability
 - . Employee can exhaust entire account and then cease COBRA payments
 - . Limited obligation for excepted Health Care FSA
 - » Only offered if Health Care FSA is not overspent
 - » Only offered through end of plan year

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“Use it or Lose it” and Forfeiture Issues

” Uniform Coverage Rule

- . Employer risk
 - ” **COBRA liability**
 - . Full obligation for non-excepted Health Care FSA
 - » Offered even if Health Care FSA is overspent
 - » Can elect Health Care FSA in new plan year

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“Use it or Lose it” and Forfeiture Issues

” Uniform Coverage Rule

- . Employer risk
 - ” **Limit COBRA exposure by Plan design**
 - . Offer Health Care FSA only to those offered employer-sponsored major medical plan
 - . Contribute no more than
 - » \$500 or
 - » Employee’s pre-tax contribution (match)
 - . Creates an excepted Health Care FSA

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“Use it or Lose it” and Forfeiture Issues

” Use it or Lose it

- . Employee risk
 - ” Employees must use entire benefit by end of plan year or they “forfeit” unused amount
 - ” Elections must be prospective and cannot be changed; can be hard to estimate
 - . Permitted Election Change Events allow changes but are not always anticipated
 - ” Use it or Lose it applies to all Cafeteria Plan benefits

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“Use it or Lose it” and Forfeiture Issues

” Use it or Lose it

- . Employee risk
 - ” Forfeitures can lower employee participation
- . Reduce employee risk
 - ” Runout period
 - . Extends the time period to submit claims
 - . Usually 3 months following plan year
 - . Can differ for mid-year terminations
 - . Does not help if no claims to submit

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“Use it or Lose it” and Forfeiture Issues

” Use it or Lose it

- . Reduce employee risk

” Grace period

- . Extends the time period to incur expenses
- . Up to 2 ½ months following plan year
- . Typically concurrent with runout period so grace period claims must be submitted by end of runout period
- . Grace period can affect HSA eligibility

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“Use it or Lose it” and Forfeiture Issues

” Use it or Lose it

- . Reduce employee risk

” Health Care FSA Rollover/Carryover

- . Extends time period to use Plan funds
- . Rollover up to \$500 of unused Health Care FSA funds from previous plan year to new plan year
- . Cannot be implemented on a plan with grace period

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“Use it or Lose it” and Forfeiture Issues

” Use it or Lose it

- . Reduce employee risk
 - ” **Health Care FSA Rollover/Carryover**
 - . Employer can define under what conditions one receives rollover
 - » **Must make new election**
 - » **Must have a minimum of unused funds**
 - . COBRA participants must be treated the same as active participants

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“Use it or Lose it” and Forfeiture Issues

” Use it or Lose it

- . Reduce employee risk
 - ” **Health Care FSA Rollover/Carryover**
 - . Rollover dollars are in addition to new plan year Health Care FSA election
 - . Rollover can affect HSA eligibility

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“Use it or Lose it” and Forfeiture Issues

” Use it or Lose it

- . Reduce employee risk

” Health Care FSA Rollover/Carryover

- . Rollover eligibility determined by participation on last day of the plan year
 - » Employees who terminate in last month of plan year may have access to rollover if kept on through the month
 - » Qualified Beneficiaries on Plan through COBRA may have access to rollover if participating on last day of plan year

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“Use it or Lose it” and Forfeiture Issues

” Use it or Lose it

- . Reduce employee risk

” Health Care FSA Rollover/Carryover

- . Rollover can impact COBRA
 - » Rollover is not included in COBRA premium calculation as premium was paid in prior year
 - » Rollover is included when determining if an account is overspent: COBRA premium > remaining balance = overspent
 - » Rollover only accounts with a balance are not overspent and COBRA must be offered

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“Use it or Lose it” and Forfeiture Issues

” Managing Forfeitures

- . IRS views forfeitures as “Experience Gains”
 - ” **Overspent Health Care FSAs are “Experience Losses”**
 - ” **Will not have experience gains if losses cover the difference**

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“Use it or Lose it” and Forfeiture Issues

” Managing Forfeitures

- . Employers have options to deal with Experience Gains
 - ” **Offset Experience Losses**
 - ” **Offset administrative fees for Plan**
 - ” **Disburse to employees as taxable income – NOT in proportion to amounts used**
 - ” **Disburse in new plan year as Employer contribution**

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HSA and Limited Health FSAs

HSA and Limited Health FSAs

- “ What is a Health Savings Account (HSA)?
 - . Allows tax-free savings for reimbursement or payment of eligible health-related expenses
 - . Individual bank account – not a “health plan”
 - . Not “employer-sponsored”

HSA and Limited Health FSAs

- “ HSA account holder **MUST** have:
 - . A qualified High-Deductible Health Plan (HDHP)
 - “ **Minimum Deductible:**
Single \geq \$1,350 / Family \geq \$2,700
 - “ **Maximum Out of Pocket:**
Single \leq \$6,650 / Family \leq \$13,300
 - . No other disqualifying coverage

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HSA and Limited Health FSAs

- “ HSA Account Holders who do not meet requirements
 - . Are not eligible to contribute to HSA
 - . Are subject to taxation on ineligible contributions
 - “ **Contributions are considered taxable compensation**
 - “ **Contributions are subject to a 6% excise tax**

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HSA and Limited Health FSAs

“ What is disqualifying coverage?

- . Any coverage that provides coverage for HSA account holder before statutory minimum deductible is met

“ Examples

- . Single HRA that reimburses prior to \$1,350 deductible
- . Spouse’s standard Health Care FSA
- . Medicare, Medicaid, TRICARE

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HSA and Limited Health FSAs

“ What is a limited health FSA?

- . Covers only dental and vision expenses
- . Not considered disqualifying coverage
- . Allows HSA balances to grow while paying for ongoing dental or vision expenses tax-free
- . Can be offered alongside a standard health FSA if offering a HDHP and traditional plan

“ Employee is responsible to ensure they are eligible to make HSA contributions

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HSA and Limited Health FSAs

” Who is responsible for compliance?

- . Employee is responsible to ensure they are eligible to make HSA contributions
- . Employer is responsible for ensuring they are not pre-taxing for HSA contributions and a standard Health Care FSA at the same time

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HSA and Limited Health FSAs

” Pitfalls with Health Care FSAs and HSAs

- . Grace period
 - ” Employee with a standard health FSA balance on last day of Plan cannot contribute to an HSA until 1st of month following grace period
 - ” Employee with a \$0 standard health FSA balance on last day of Plan can contribute on 1st of month following plan year end

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HSA and Limited Health FSAs

” Pitfalls with Health Care FSAs and HSAs

- Rollover

- ” Employee with standard health FSA in new plan year due to rollover cannot contribute to an HSA until

- 1st of month following termination of standard health FSA

- » Typically the 1st of the month following runout if balance is used on prior year expenses during runout

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HSA and Limited Health FSAs

” Climbing out of the Pit

- Awareness and communication

- ” Timing issues

- When does HDHP become effective?

- When can an HSA be opened/funded?

- ” Other plans might affect employee eligibility - communication is key because employees must self-monitor

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HSA and Limited Health FSAs

- ” Climbing out of the Pit
 - . Plan amendments
 - ” Remove rollover or grace period
 - ” Adding limited health FSA
 - ” Consider adding rollover restrictions or rules
 - . New plan year election required
 - . Minimum rollover required
 - . Monitor obvious account conflicts

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Cash in Lieu of Benefits/Flex Credits

” Cash in Lieu of Benefits

- . Employer provides a cash payment for not enrolling in a group plan
- . Important to obtain proof of other group health plan coverage if providing additional cash payment for waiving coverage
- . Offer on a widespread basis to avoid violating other laws/rules

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Cash in Lieu of Benefits/Flex Credits

” Cash in Lieu of Benefits

- . ACA Issues
 - ” Only affects Applicable Large Employers
 - ” Can affect affordability calculation

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Cash in Lieu of Benefits/Flex Credits

“ Flex Credits

- . Employer determines how much employer will spend on employee benefits and employees choose how to spend
- . Employer contribution is fixed
- . Benefits chosen in excess of employer contribution are purchased through pre-tax salary reduction

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Cash in Lieu of Benefits/Flex Credits

“ Flex Credits

- . Often thought of as “True” Cafeteria Plan or Flex Credits
- . Employer options:
 - “ **Elective Contributions – Employee sets allocation**
 - “ **Non-Elective Contributions – Employer sets allocation**
 - “ **Cashable /Noncashable Contributions**

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Cash in Lieu of Benefits/Flex Credits

” Flex Credits

- . ACA Issues

- ” Only affects Applicable Large Employers

- ” Affordability calculation affected if it either

- . Contains a cash out option
- . Can be used for major medical coverage and/or non-medical coverage
 - » Dependent Care FSA
 - » Life or disability insurance

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Employer Contributions

“ Elective Employer Contributions

- . Amounts allocated to Health Care FSA are considered employer contributions for excepted status
 - “ **Limit Health Care FSA portion to \$500 to avoid non-excepted status**
- . Permitted Election Change Events allow employee to reallocate employer contribution amounts

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Employer Contributions

“ Elective Employer Contributions

- . Example:
 - “ **ABC Company’s Cafeteria Plan contains**
 - . Employer-sponsored medical insurance
 - . Employer-sponsored dental insurance
 - . Health Care FSA with \$2,650 maximum
 - . Dependent Care FSA

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Employer Contributions

“ Elective Employer Contributions

- . Example:

- “ **ABC Company’s Employer Contributions**

- . \$400 per month to be used towards any of these options
 - . Only \$40 per month can be allocated to Health Care FSA
 - . Any unused amount is forfeited

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Employer Contributions

“ Elective Employer Contributions

- . Example:

- “ **Sally**

- . Elects \$250 per month for single health
 - . Elects \$30 per month for single dental
 - . Elects \$40 per month for Health Care FSA
 - . Leftover \$80 is forfeited

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Employer Contributions

“ Elective Employer Contributions

- . Example:

- “ Sally’s \$480 employer contribution

- . Is not subject to the \$2,650 statutory Health Care FSA maximum
 - . Allows Sally to be reimbursed up to \$3,130 for the plan year

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Employer Contributions

“ Elective Employer Contributions

- . Example:

- “ Max

- . Elects \$400 per month towards his \$950 family health insurance premium
 - . Extra \$550 per month would be deducted pre-tax
 - . Any Health Care FSA and Dependent Care FSA election would be his pre-tax responsibility

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Employer Contributions

“ Non-Elective Employer Contributions

- . Amounts allocated to Health Care FSA are considered employer contributions for excepted status
 - “ **Limit Health Care FSA portion to \$500 to avoid non-excepted status**
- . Permitted Election Change Events do not allow employee to reallocate employer contribution amounts

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Employer Contributions

“ Non-Elective Employer Contributions

- . Example:
 - “ **DEF Company’s Cafeteria Plan contains**
 - . Employer-sponsored medical insurance
 - . Employer-sponsored dental insurance
 - . Health Care FSA with \$2,650 maximum
 - . Dependent Care FSA

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Employer Contributions

“ Non-Elective Employer Contributions

- . Example:

- “ DEF Company’s Employer Contributions

- . \$200 per month for single health coverage
 - . \$400 per month for family health coverage
 - . \$50 per month for single or family dental coverage
 - . \$100 per year in Health Care FSA if employee elects

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Employer Contributions

“ Non-Elective Employer Contributions

- . Example:

- “ Sally

- . Elects \$250 per month for single health
 - . Elects \$30 per month for single dental
 - . Elects \$120 for Health Care FSA
 - . Extra \$50 for health is deducted pre-tax
 - . Extra \$20 for dental is forfeited
 - . Receives total Health Care FSA of \$220

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Employer Contributions

“ Non-Elective Employer Contributions

- . Example:

- “ Max

- . Elects \$950 per month for family health insurance
 - . Elects \$2,650 for Health Care FSA
 - . Elects \$5,000 for Dependent Care FSA
 - . Extra \$750 for health is deducted pre-tax
 - . Receives total Health Care FSA of \$2,750

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Employer Contributions

“ Cashable Employer Contributions

- . Amounts allocated to Health Care FSA are considered employee contributions

- “ Subject to the \$2,650 statutory maximum

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Nondiscrimination Testing

Nondiscrimination Testing

“ IRS Requirements

- Self-employed individuals cannot participate in Cafeteria Plan at all
- Plan cannot discriminate in eligibility and benefits in favor of highly compensated employees/individuals (multiple definitions)
- Mandated Cafeteria Plan testing at end of each plan year

Nondiscrimination Testing

” IRS Requirements

- . Cafeteria plans with FSA options have 9 required tests
- . Other plans are subject to nondiscrimination testing as well
 - ” Self-funded medical plans
 - ” Life insurance
- . Test and results may be requested upon audit

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Nondiscrimination Testing

” If a plan fails end of year testing

- . Benefits offered under that plan will be taxable to the highly compensated person
- . Changes to elections are not allowed if plan year is closed

” Pre-testing can identify potential issues

- . Generally employer can change elections during plan year to avoid potential failure

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Nondiscrimination Testing

- “ **Health Care FSA (Section 105 plan tests)**
 - . Eligibility Test*
 - . Benefits Test
- “ **Dependent Care FSA (Section 129 plan tests)**
 - . Eligibility Test
 - . Contributions and Benefits Test
 - . 55% Average Test*
 - . 25% Owner Concentration Test

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Nondiscrimination Testing

- “ **Cafeteria Plan (Section 125 plan tests)**
 - . Eligibility Test
 - . Contributions and Benefits Test*
 - . 25% Concentration Test (key employee test)*

***Tests that result in most frequent failures**

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Nondiscrimination Testing

” Health Care FSA

- Eligibility Test

- ” Reasons for Failure

- Health Care FSA participation top-heavy
 - Includes top 25% by pay regardless of compensation or authority as “highly compensated”

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Nondiscrimination Testing

” Health Care FSA

- Eligibility Test

- ” Options to avoid failure

- Increase participation among lower-paid
 - Decrease participation among higher-paid
 - Limit eligibility to only full-time employees
 - Offer an employer contribution for all eligible employees into a Health Care FSA

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Nondiscrimination Testing

“ Dependent Care FSA

- . 55% Average Test

“ Reasons for Failure

- . Very small percentage of employees are owners or highly compensated individuals and one of them participates
- . Not many non-highly compensated individuals elect Dependent Care FSA

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Nondiscrimination Testing

“ Dependent Care FSA

- . 55% Average Test

“ Options to avoid failure

- . Owners and highly compensated individuals do not participate
- . Owners' and highly compensated individuals' maximums are reduced based on preliminary test findings
 - » **Constant monitoring**
 - » **Can only modify by reducing**

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Nondiscrimination Testing

” Cafeteria Plan

- . Contributions and Benefits Test
 - ” Safe Harbor pass if company pays 75% or more of every health plan premium for every eligible employee

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Nondiscrimination Testing

” Cafeteria Plan

- . Contributions and Benefits Test
 - ” Reasons for failure
 - . Owner, officer, and highly compensated individuals comprising large percentage of the pre-tax insurance premiums
 - . Owner and/or officer participates in pre-tax insurance premiums and the disparity in compensation with other employees is not great

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Nondiscrimination Testing

” Cafeteria Plan

- . Contributions and Benefits Test

 - ” Options to avoid failure

 - . Increase participation in pre-tax premiums
 - . Avoid 100% employer-paid single plans
 - . Increase owner and/or officer compensation
 - . Owner and/or officer pay share of insurance premiums post-tax
 - . Decrease eligibility of employees

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Nondiscrimination Testing

” Cafeteria Plan

- . 25% Concentration Test (Key Employee test)

 - ” Reasons for failure

 - . Key Employees participate to a more than 25% extent in total Cafeteria Plan benefit plans
 - . Not many employees have pre-tax insurance or FSA elections

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Nondiscrimination Testing

” Cafeteria Plan

- . 25% Concentration Test (Key Employee test)

” Options to avoid failure

- . Key Employees pay portion of insurance premiums post-tax
- . Avoid 100% employer-paid single insurance plans

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Questions?

” Any questions can be addressed by e-mail or phone at your convenience

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