



## Nondiscrimination Testing Overview



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## Key Factors to Consider when implementing an HSA in 2018

Minimum Health Plan Deductibles for 2018:  
**\$1,350 Single | \$2,700 Family**

Compliance Buzz

Tax Reform and Tax Advantaged Benefits

12/20/2017 | 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 >](#)



**Download our Enrollment Toolkit**  
**Employers** | Promote your plan and save! Our toolkit makes it easy to increase FSA enrollment by reminding your employees about the value of using an FSA. Posters,



**View Our Webinars**  
**Compliance Expertise** | Brokers and employers are welcome to register for January's webinar sessions, where we will provide an introduction to Health Savings



**Health Benefits 101**  
**News Center** | HMO, PPO, POS, FSA, HRA, HSA. What, now? Learn about the basics of health benefits with our ongoing educational series. [Learn more >](#)



**What are Documentation Requests?**  
**Benefits Card** | Did you use your Benefits Card with your BESTflex Plan Health Care FSA, and then receive a Documentation

## 2018 Webinar Schedule

### Introduction to Health Savings Accounts (HSA)



**Webinars you just can't afford to miss.**  
"I can always count on your webinars to be relevant, informative and reliable. The downloaded handout and Q&A are an added bonus!"

Fielda Blake | CHS Insurance Services



January

#### Introduction to Health Savings Accounts (HSA)

**See Slides:** ACFCI, CAS, 65 minutes  
By attending this webinar you'll learn:

- What is a Health Savings Account (HSA)?
- Who is eligible for an HSA?
- Who can make HSA contributions?
- What are the HSA contribution limits?
- What expenses are tax-deductible under the HSA?
- What reporting is required for the HSA and who is responsible?

**Audience:** All clients, brokers  
Thank you for attending!

#### Downloads

Slide Handout  
Webinar Q&A



February

#### Advanced HSA Concepts

**See Slides:** ACFCI, CAS, 65 minutes  
By attending this webinar you'll learn:

- How does the employer make contributions to an HSA?
- What is the impact to HSA when an individual is not covered by the HDHP all year?

#### Downloads

Not yet available

## Compliance Services

### Boot Camp Videos Permitted Election Changes

- Part 1 - Change in Status Events (45:53)  
[Download](#) | [Slide Handout](#)
- Part 2 - Cost and Coverage Events (47:25)  
[Download](#) | [Slide Handout](#)
- Part 3 - Leaves of Absence (1:00:27)  
[Download](#) | [Slide Handout](#)

### Compliance Services Basics

- Compliance Services Help
- Non-discrimination Testing
- Wrap Documents
- ACA Resources
- Required ACA Reporting
- Webinars
- Compliance Buzz

## Acronym Guide-Glossary of Terms

Acronym	Definition
FSA	Flexible Spending Account
HC	Highly Compensated
HCE	Highly Compensated Employee
HCI	Highly Compensated Individual
HCP	Highly Compensated Participant
HRA	Health Reimbursement Arrangement
HSA	Health Savings Account
IRS	Internal Revenue Service
Non-HCE	Non Highly Compensated Employee

**IRS Requirements**  
**Common Data Errors**  
**Reasons and How to Fix Failures**  
**Outside Factors**

## IRS Requirements

## IRS Requirements

- IRS Mandated testing for each plan year regardless of business type (**no governmental employer or church plan exception**)
- Test and results may be requested in financial or IRS audit
- Failure of a test may result in taxation for highly compensated and/or key employees
- Number of tests required is determined by plan type and which benefit offerings are included in the plan
  - 2 tests per self-funded health plan (e.g. Health Care FSA, HRA)
  - 4 tests per Dependent Care FSA
  - 3 tests per Cafeteria Plan

## IRS Requirements

- **Number of tests determined by plan type**
  - Section 105 - Self-funded Health Plan (e.g. Health Care FSA)
    - **Eligibility Test\***
    - **Benefits Test**
  - Section 129 - Dependent Care FSA
    - **Eligibility Test**
    - **Contributions and Benefits Test**
    - **55% Average Test\***
    - **25% Owner Concentration test**

\*Most common tests that fail

## IRS Requirements

- **Number of tests determined by plan type**
  - Section 125 - Cafeteria Plan
    - **Eligibility Test**
    - **Contributions and Benefits Test\***
    - **25% Concentration Test (key employee test)\***
- **Each set of tests has own Highly-Compensated definition**
- **If 105 or 129 tests fail, 125 test is impacted**
- **125 test must be done at end of plan year**

\*Most common tests that fail

## Premium-only plan (POP)

- Allows eligible employees to pay their Group Insurance Premiums on a pre-tax basis.
- Safeharbor Test
  - The guidance allows these plans to skip the Concentration and Benefits Test and 25% Concentration Test if they pass the Safeharbor Eligibility Test.

## Common Data Errors

## Common Data Errors

- **Missing or incorrectly identifying Cafeteria Plan premiums**
  - 100% employer-paid are not included
  - 100% employee-paid are included if pre-tax
    - **Report all cafeteria plan premiums and any HSA contributions**
  - Full cost of benefit included if any portion pre-tax
    - **Report all cafeteria plan premiums and any HSA contributions**
    - **Example: Carrier bills the employer \$1,000 for Family Health Insurance**
      - Employer pays \$800 per month and Employee pays \$200 per month pre-tax. Report Premium as \$1,000 for testing purposes

**Note:** HSA contributions should be reported in consideration of the total annual amount and will include employer contributions to the HSA and Employee pre-tax contributions to the HSA

## Common Data Errors

- **Officer not correctly identified**
  - All organizations have an officer under testing definition
    - **For example, Superintendent of a school district, Executive Director of a non-profit, President, CEO, etc.**
  - Most organization have more financial officers than testing officers
  - Some officers have a title that appears to be an officer role but don't have the day to day authority for the business (i.e. VP of Sales, VP of Marketing, etc.)

## Common Data Errors

- Reporting correct compensation
  - Should be gross wages, **not gross taxable wages**
    - Includes all taxable wages the employee receives from the employer, adds back any pre-tax benefits the employee elects, as well as adds any taxable benefits the employee receives.
    - The calculation starts with the employee's taxable (W-2) wages.
    - Add to the above any amounts the employee sets aside pre-tax through payroll deduction benefits
      - Section 125 pre-tax deductions for premiums, flexible spending account and health savings accounts; transportation benefits deducted pre-tax for parking and/or transit; retirement plan deductions (i.e. 401k, 403(b))
    - Additionally, any other taxable benefits the employee receives from the employer
      - For example the premium attributed to group term life insurance in excess of \$50,000
    - The premium attributed to disability insurance
    - Wellness benefits considered taxable as income

## Common Data Errors

- Reporting correct compensation
  - Compensation period looks back a year (ongoing employees)
    - Calendar plans use prior plan year
    - The same compensation for the short plan year should be reported as if the plan year was twelve months in duration and ended on the same date.



## Common Data Errors

- Reporting correct compensation (cont.)

**Example:** Calendar plan year ending December 31, 2018:

- Employee hired prior to start of plan year January 1, 2018
  - Report gross annual compensation for January 1, 2017 to December 31, 2017
- Employee hired prior to start of plan year January 1, 2018, but terminates sometime in 2018
  - Report gross annual compensation for January 1, 2017 to December 31, 2017
- Employee hired after start of plan year January 1, 2018 and is still actively employed
  - Report a projection of estimated gross annual compensation from hire date to December 31, 2018
- Employee hired after start of plan year January 1, 2018 and terminated in 2018 before the plan year ends
  - Report gross annual compensation as year-to-date total from hire date to termination date

## Common Data Errors

- Reporting correct compensation (cont.)

**Example:** Non-calendar plan year ending October 31, 2018:

- **Preferred method** – report gross annual compensation looking back to prior plan year
  - Employee hired prior to November 1, 2017
    - Report gross annual compensation for November 1, 2016 to October 31, 2017
  - Employee hired after November 1, 2017 and terminated employment already
    - Report gross annual compensation from hire date to termination date
  - Employee hired after November 1, 2017 and is still actively employed
    - Report estimated gross annual compensation from hire date to end of plan year October 31, 2018

## Common Data Errors

- Reporting correct compensation (cont.)

**Example:** Non-calendar plan year ending October 31, 2018:

- **Alternative method** – look back to prior tax year that ended during the current plan year
  - Employee hired prior to January 1, 2018
    - Report gross annual compensation for January 1, 2017 to December 31, 2017
  - Employee hired after January 1, 2018 and terminated employment already
    - Report gross annual compensation from hire date to termination date
  - Employee hired after January 1, 2018 and is still actively employed
    - Report estimated gross annual compensation from hire date to December 31, 2018

## Common Data Errors

- Extra employees or missing employees

- Employees employed during plan year
  - Employees who terminated during plan year
  - Employees hired during plan year
  - Do not report employees that terminated in prior plan year
- Employees of related employers if all under one cafeteria plan
- Non-benefit eligible employees (all employees that received a W-2 for that plan year)
- Incorrectly identifying eligible employees
  - Must be eligible for the benefit being tested
  - Especially difficult for Cafeteria Plan testing

## Reasons and How to Fix Failures

## Reasons and How to Fix Failures

- Section 105 - Self-funded health plans
  - **Highly Compensated includes**
    - Over 10% owners
    - **Top 25% of employees** by pay
    - Officers

## Reasons and How to Fix Failures

- Section 105 - Self-funded health plans (e.g. Health Care FSA)
  - **Excludable employees**
    - Ineligible employees who have not completed 3 years of service as of the first date of the plan year
    - Ineligible employees who were under the age of 25 as of the first date of the plan year
    - Ineligible employees who are part-time or seasonal employees
    - Ineligible employees who are not eligible due to collectively bargained agreements (benefit has not been collectively bargained)
    - Ineligible employees who receive no U.S. source earned income

## Reasons and How to Fix Failures

- Section 105 - Self-funded health plans (e.g. Health Care FSA)
  - **Eligibility Test\***
    - Fails if there are more Highly Compensated participants than non-Highly Compensated participants
    - **Avoid failure by**
      - Increasing number of non-Highly Compensated participants
      - Decreasing number of Highly Compensated participants
      - Limiting eligibility
      - Auto-enrolling all eligible employees by offering 100% employer-paid options (e.g. employer contributions to Health Care FSA)

## Reasons and How to Fix Failures

- **Section 105 - Self-funded health plans (e.g. Health Care FSA)**
  - **Benefits Test**
    - **Fails if Highly Compensated employees are offered**
      - Shorter waiting period than non-Highly Compensated employees
      - Larger benefit pay-out than non-Highly Compensated employees
    - **Avoid failure by offering non-Highly Compensated employees**
      - Plan at the same time as Highly Compensated employees
      - Same benefits as Highly Compensated employees

## Reasons and How to Fix Failures

- **Section 129 - Dependent Care FSA**
  - **Highly Compensated includes**
    - **Over 5% owners**
    - **Employees whose compensation exceeds threshold**
      - Prior year threshold and compensation applies unless new hires
      - Limit to top 20% of employees by pay if more than 20% of employees' compensation exceeds threshold

## Reasons and How to Fix Failures

- Section 129 - Dependent Care FSA

- **Excludable employees**

- Employees who are ineligible due to eligibility criteria stating an age requirement of age 21
    - Employees who are ineligible due to eligibility criteria stating a waiting period of one year
    - Ineligible employees who are not eligible due to collectively bargained agreements\*

\*Note: June 27, 2018 Supreme Court decision re: [\*Janus v. American Federation of State, County, and Municipal Employees\*](#). The ruling said that non-collectively bargained employees no longer can be required to pay union dues. Employers should review how this might impact eligibility criteria used for testing.

## Reasons and How to Fix Failures

- Section 129 - Dependent Care FSA

- **Eligibility Test**

- Fails if percentage of eligible non-HCEs is less than 20% of the percentage of eligible HCEs
      - Example: Client fails with percentage of 11.12%
        - » 2 eligible HCEs, 4 total HCEs (50%)
        - » 50 eligible non-HCEs, 900 non-HCEs (5.56%)
    - **Avoid failure by**
      - Hiring less seasonal or part-time employees
      - Expanding eligibility for benefit

## Reasons and How to Fix Failures

- **Section 129 - Dependent Care FSA**
  - **Contributions and Benefits Test**
    - **Fails if HCEs are offered**
      - Options that are not available to non-HCEs
        - » Onsite daycare
        - » Bussing programs
      - Larger benefit pay-out than non-HCEs
    - **Avoid failure by**
      - Same benefits as Highly Compensated employees

## Reasons and How to Fix Failures

- **Section 129 - Dependent Care FSA**
  - **55% Average Test\***
    - **Fails if average non-HCE election is 55% or less of average HCE election (excluding non-HCEs earning less than \$25,000)**
      - Example: Client fails with percentage of 3.71%
        - » 20 HCEs elect \$5,000 (\$250 average)
        - » 1000 non-HCEs elect \$9,000 (\$9.28 average)
        - » 30 non-HCEs earning less than \$25,000

\*Test commonly fails

## Reasons and How to Fix Failures

- **Section 129 - Dependent Care FSA**
    - **55% Average Test\***
      - **Avoid failure by**
        - Prohibiting HCEs from electing
        - Limit HCEs elections
          - » **Constant monitoring required**
            - Mid-year election changes
            - New hire elections
          - » **Cannot increase mid-year if results are better than anticipated**
- \*Test commonly fails

## Reasons and How to Fix Failures

- **Section 129 - Dependent Care FSA**
  - **25% Owner Concentration Test**
    - **Fails if more than 5% owner's and their spouse's and dependent's elections comprise more than 25% of the elections for the plan**
      - **Example: Client fails with percentage of 28.57%**
        - » 10% Owner elects \$5,000
        - » Owner's dependent child elects \$5,000
        - » Non-owners elect \$25,000



## Reasons and How to Fix Failures

- **Section 129 - Dependent Care FSA**
  - **25% Owner Concentration Test**
    - **Avoid failure by**
      - Prohibiting > 5% owners, spouses and dependents from electing
      - Limit > 5% owners', spouses' and dependents' elections to 33% of non-owners' elections
        - » **Constant monitoring required**
          - Mid-year election changes
          - New hire elections
        - » **Cannot increase mid-year if results are better than anticipated**

## Reasons and How to Fix Failures

- **Section 125 - Cafeteria Plan**
  - **Highly Compensated includes**
    - **Officers**
    - **Employees whose compensation exceeds threshold**
      - Prior year threshold and compensation applies unless new hires
      - Limit to top 20% of employees by pay if more than 20% of employees' compensation exceeds threshold
    - **Over 5% owners**
    - **Spouse or tax dependent of any of these**

## Reasons and How to Fix Failures

- Section 125 - Cafeteria Plan

- **Excludable employees**

- Ineligible employees who are not eligible due to collectively bargained agreements

\*Note: June 27, 2018 Supreme Court decision re: [Janus v. American Federation of State, County, and Municipal Employees](#). The ruling said that non-collectively bargained employees no longer can be required to pay union dues. Employers should review how this might impact eligibility criteria used for testing.

## Reasons and How to Fix Failures

- Section 125 - Cafeteria Plan

- **Eligibility Test**

- Fails if percentage of eligible non-HCEs is less than 20% of the percentage of eligible HCEs
      - Example: Client fails with percentage of 11.12%
        - » 2 eligible HCEs, 4 total HCEs (50%)
        - » 50 eligible non-HCEs, 900 non-HCEs (5.56%)
    - Avoid failure by
      - Hiring less seasonal or part-time employees
      - Expanding eligibility for benefit

## Reasons and How to Fix Failures

- **Section 125 - Cafeteria Plan**
  - **Contributions and Benefits Test**
    - Passes automatically if company pays 75% or more of every health plan premium for every eligible employee
    - **Utilization Test**
      - Fails if HCEs' benefit to compensation ratio exceeds non-HCEs'
        - » **Example: Client fails with HCEs at 12.82% and non-HCEs at 9%**
          - HCEs elect \$250,000 in Cafeteria Plan benefits
          - HCEs earn \$1,950,000 combined
          - non-HCEs elect \$9,000,000 in Cafeteria Plan benefits
          - Eligible non-HCEs earn \$100,000,000 combined

## Reasons and How to Fix Failures

- **Section 125 - Cafeteria Plan**
  - **Contributions and Benefits Test**
    - **Utilization Test**
      - Avoid failure by
        - » **Increasing Cafeteria Plan participation among non-HCEs**
        - » **Avoiding 100% employer-paid single insurance premiums**
        - » **Increasing HCE overall compensation**
        - » **Having HCEs pay post-tax for insurance (mostly health)**
        - » **Decreasing number of eligible employees**

## Reasons and How to Fix Failures

- **Section 125 - Cafeteria Plan**
  - **Contributions and Benefits Test**
    - **Availability Test**
      - Fails if HCEs are offered options that are not available to non-HCEs
        - » **Better insurance plans**
        - » **Additional insurance plans**
      - Avoid failure by offering same insurance plans to all eligible employees

## Reasons and How to Fix Failures

- **Section 125 - Cafeteria Plan**
  - **25% Concentration Test (key employee test)**
    - **Key employees include**
      - Officers who earn over threshold
      - More than 5% owners
      - More than 1% owners who earn over \$150,000
      - Spouses and dependents of any of these

## Reasons and How to Fix Failures

- Section 125 - Cafeteria Plan
  - **25% Concentration Test (key employee test)**
    - Fails if key employees' elections comprise more than 25% of the elections for the plan
      - Example: Client fails with percentage of 26.32%
        - » 10% Owner elects \$25,000
        - » Owner's dependent child elects \$25,000
        - » Non-key employees' elect \$190,000

## Reasons and How to Fix Failures

- Section 125 - Cafeteria Plan
  - **25% Concentration Test (key employee test)**
    - Avoid failure by
      - Prohibiting key employees from electing
      - Avoiding 100% employer-paid single insurance premiums
      - Having HCEs pay post-tax for insurance (mostly health)
      - Waiting to make HSA contributions until end of plan year
        - » Any taxpayer with the HDHP can make HSA contributions directly to the HSA custodian outside the plan and take the deductions on their personal tax return.

## Outside Factors

## Outside factors

- **Large changes in number of total employees**
  - Mass layoffs
    - Lowers participation among non-HCEs
    - Section 105 Eligibility Test at risk (following plan year)
  - Mass hiring
    - New employees ineligible: Section 129 and 125 Eligibility Tests at risk (current plan year)
    - New employees eligible but not electing self-funded health plan: Section 105 Eligibility Test at risk (current plan year)

## Outside factors

- **Implementing a HDHP**
  - Section 105 Eligibility Test risks for Health Care FSA
    - Higher interest in HDHP among lower-paid individuals
    - Alleviates most interest in Health Care FSA due to HSA interaction
    - Limited Health Care FSA not as appealing

## Outside factors

- **Changing plan year**
  - Interest for short plan year among non-HCEs declines
    - Section 105 Eligibility Test at risk for Health Care FSA
    - Section 129 55% Average Test at risk
    - Section 129 25% Owner Concentration Test at risk
- **Employees' children aging out of Dependent Care**
  - Section 129 55% Average Test at risk
  - Section 129 25% Owner Concentration Test at risk

## Questions?

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

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