

# Employee Benefits Corporation

Celebrating 30 Years



**From Premium Only to Premium Plus:**  
*Find the Cafeteria Plan That's Best For You*



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The screenshot shows the Employee Benefits Corporation website. At the top left is the logo. To the right are navigation links: Start Here, Brokers, Employers, Participants, and a Log In button. Below this is a green navigation bar with links for HOME, PRODUCTS, SUPPORT, EDUCATION, ABOUT US, and QUICK FORMS. The main content area is titled "Upcoming Webinars" and features a section for "June". The featured webinar is "From Premium Only to Premium Plus: Find the Cafeteria Plan That's Best For You" by Erin Freiberg, JD, 60 minutes. It includes a list of topics: the difference between cafeteria plans and ERISA plans, cafeteria plan requirements, premium only plans, Flexible Spending Accounts, and Health Savings Account contributions. A "Downloads" section is highlighted with a red box, containing a link for "Slide Handout". To the right of the webinar details is a photo of two people looking at a tablet and a sidebar menu with options like Compliance Education, Webinars, Compliance Buzz, The News Center, Start Here, and Products. The footer contains the copyright notice "© 2019 Employee Benefits Corporation, All Rights Reserved" and the page number "5".

The slide is titled "Today's Agenda:" in a large green box. On the left side is the Employee Benefits Corporation logo, including the text "Celebrating 30 Years". To the right of the logo is a bulleted list of agenda items: Cafeteria Plan Basics, Cafeteria Plan Requirements, What Can You Do with a Cafeteria Plan?, and ERISA Basics. The footer contains the copyright notice "© 2019 Employee Benefits Corporation, All Rights Reserved" and the page number "6".

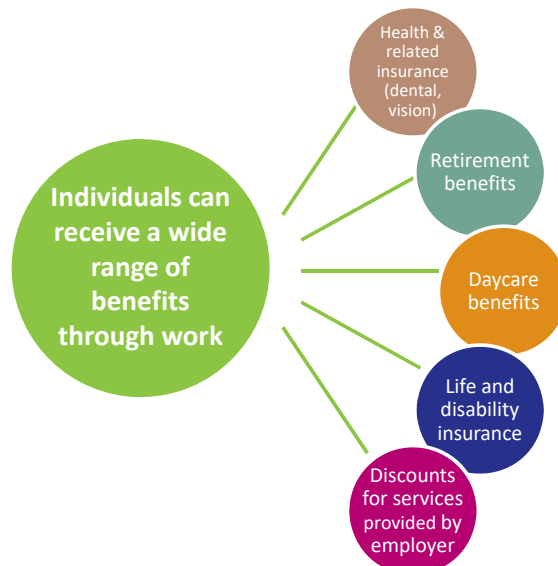


## Cafeteria Plan Basics

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## Employee Benefits in the United States



**Without special tax rules, all of these would be taxed as income to the employee**

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## Employee Benefits in the United States

In exchange for tax breaks, Employers are expected to play by certain rules

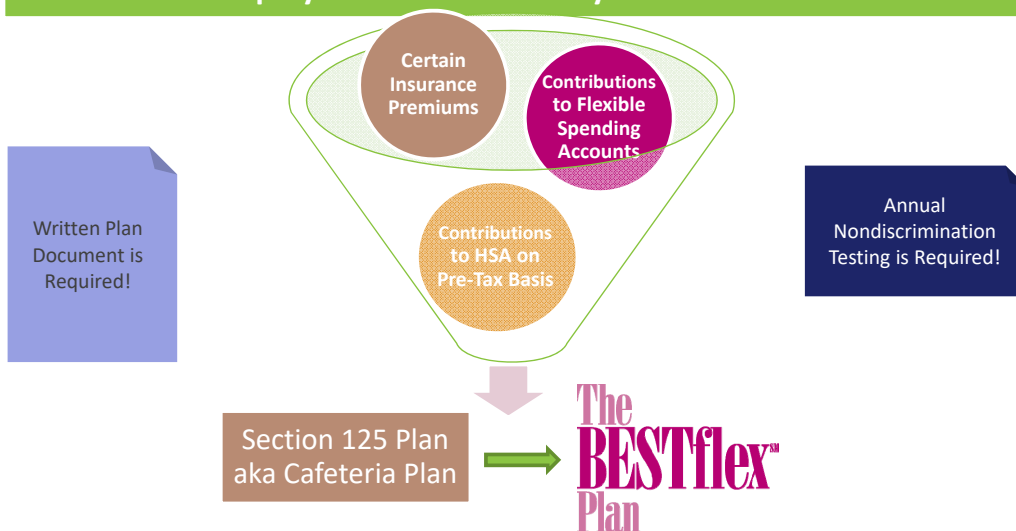
**Internal Revenue Code (IRC)** – provides tax breaks for benefits and rules to ensure employers don't treat employees unfairly or game the system in offering benefits

**ERISA** – ensures that employers keep their promises and don't take advantage of their employees in offering benefits

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## Section 125 of the Internal Revenue Code

Allows employees to make a salary reduction election for:



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## What is a Cafeteria Plan?

- Offers a choice between taxable compensation and a tax-free benefit through salary reduction
  - To pay certain group insurance premiums
  - To waive certain benefits (cash-in-lieu-of-benefits)
  - To set aside money for eligible medical, dependent care, and individual insurance expenses (FSAs)
- **Premium Only Plan (POP) is a fun term for a cafeteria plan that does not include flexible spending arrangements**
  - Misleading term – it's not just about premiums!
  - HSA contributions and cash-in-lieu can be part of a POP

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## Why have one

- Tax savings
  - Employee
    - FICA/Medicare tax (7.65%)
    - Federal payroll taxes, often state/local too
  - Employer
    - FICA/Medicare tax (7.65%)
    - FUTA
- Employer's savings can offset administrative fees

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## Cafeteria Plan Requirements

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### Who can participate in a Cafeteria Plan?

- Any employer can sponsor a plan
- Employee of the employer can participate (W-2)
- Who cannot participate:
  - Self-employed individuals (including owners of a sole proprietorship)
  - Partners in a partnership or Members of LLC
  - A more-than-2%-shareholder in a Subchapter S corporation (as well as their spouses, lineal ascendants and lineal descendants)

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## Cafeteria Plan Eligible and Ineligible Benefits

### Premium Only Plan

#### Eligible premiums (fully-insured or self-funded)

- Medical (group plan)
- Dental
- Vision
- Prescription drug
- Disability
- Group term life (up to \$50,000 coverage for employee only)
- AD&D
- Specified disease policies

#### Eligible FSAs

- Health Care FSA
  - standard, limited, post-deductible
- Dependent Care FSA
- Individual Premium FSA
- Adoption Assistance FSA

#### Other Eligible Benefits

- HSA contributions
- Paid Time Off buy/sell
- Post-tax cash (based on waiver of benefits)
- COBRA premiums
- 401(k)
- Workers' compensation act contributions

#### Ineligible Premiums

- Spouse or dependent group term life
- Employee group term life exceeding \$50,000 in coverage
- Individual medical insurance
- Long term care
- Whole, universal, variable life coverage or coverage with return of premium feature

#### Other Ineligible Benefits

- Coverage for domestic partners
- Educational assistance
- Transportation
- Health Reimbursement Arrangements
- Medical Savings Accounts
- Retirement (other than 401(k))

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## Elections

- Participants are allowed to make elections
  - When first eligible
  - At annual open enrollment
  - With a permitted election change event
- Elections must be prospective, except for at hire and special enrollment right for birth, adoption, placement for adoption
- Elections can be automatic with an option to opt-out (typically POP, insurance premium or employer contribution plans)

## Elections

- Election is irrevocable & usually effective for entire plan year
- Election can only be changed under certain circumstances (Permitted Election Changes)
  - To add coverage without event, deductions must be post-tax
  - To drop coverage without event, cannot stop pre-tax deductions
- HSA contributions can be changed more often

## Elections

- Election deducted pre-tax and becomes employer funds to purchase benefits
  - Non-refundable
  - No longer employee's money
- Use-it-or-lose-it - unused FSA funds are forfeited
  - Analogous to insurance company – employer keeps funds even if claims do not equal premiums

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## Nondiscrimination Testing

- Cafeteria plans (and their component benefit plans) cannot discriminate in favor of highly compensated employees (HCEs) and key employees

Cafeteria Plan Tests (\$ 125)	Health Care FSA Tests (\$ 105)	Dependent Care FSA Tests (\$ 129)	Other Components
<ul style="list-style-type: none"> <li>• Eligibility test</li> <li>• Contributions and benefits test</li> <li>• Key employee concentration test</li> </ul>	<ul style="list-style-type: none"> <li>• Eligibility test</li> <li>• Benefits test</li> </ul>	<ul style="list-style-type: none"> <li>• Eligibility test</li> <li>• Contributions and Benefits Test</li> <li>• More-Than-5% Owners Concentration Test</li> <li>• 55% Average Benefits Test</li> </ul>	<ul style="list-style-type: none"> <li>• Group Term Life (\$ 79)</li> <li>• Adoption Assistance (\$ 137)</li> </ul>

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## Nondiscrimination Testing

- Nondiscrimination testing ensures that the tax benefits don't favor highly paid people
- IRS requires testing for each plan year
- § 125 testing is required at the end of the year
- Testing failure results in taxation of a highly paid employee's benefits
- Test and results may be requested in financial audit

## Written Cafeteria Plan

- Must be a **written** document
- Must be **formally adopted** on or before the first day of the first plan year.
- Plan can be amended **prospectively** and in writing at any time.
- Plan document needs to contain information about all pre-tax elections and benefit options.

## Written Plan Requirements

A statement that the plan is intended to qualify under Code § 125

Description of available benefits

Participation rules

Election and permitted election change procedures

Employee vs Employer contributions and how they are made

Maximum amount of contributions

Plan year

Specifics regarding PTO buy/sell

Termination and rehire provisions

Any rules that will apply if an employee does not make an election

Amendment, termination, and administration provisions

Ability to change elections to comply with nondiscrimination requirements

## What Can You Do with a Cafeteria Plan?

*All Cafeteria Plans, including POPs*

## Pre-tax HSA Contributions

- **Employees:** cafeteria plan is the only way employees can make pre-tax HSA elections
  - Cafeteria plan irrevocable election rules do not apply; employees must be allowed to make changes at least monthly
- **Employers:** if employees can make pre-tax HSA elections, any employer contributions are deemed to be made through cafeteria plan

## Employer HSA Contributions

### Inside cafeteria plan:

- **Comparability Rules Do Not Apply**
- **Must Pass Nondiscrimination Testing**

### Outside cafeteria plan:

- **Comparability Rules Apply**
- **No Nondiscrimination Testing**

**If included in cafeteria plan, the document must contain details on employer HSA contributions – amount, frequency, treatment of mid-year hires, etc.**

## Cash in Lieu of Benefits

- Employer can choose to provide additional taxable compensation to employees who choose to waive specified benefits
- Structures available
  - Employee receives incentive payment for waiving benefit
  - Employee is given “flex credits” used to purchase benefits

## Flex Credits

- Effect on affordability calculation
  - If employee can only use for health benefits can count as employer contribution
  - If employee can use for non-health benefits (e.g., Dependent Care FSA), that portion is counted as employee contribution
  - If the employee can cash out any portion unconditionally (without requiring statement of Minimum Essential Coverage), cash out is added to any employee contribution

## Flexible Spending Arrangements (FSA)

- **Health Care FSAs pay for eligible medical expenses**
  - HSA-compatible options
- **Dependent Care FSAs pay for care expenses for eligible dependents**
  - Child under age 13, disabled dependent over 13
  - Custodial care only
- **Individual Premium FSAs pay for individual dental, vision, specified disease policy premiums**

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## Flexible Spending Arrangements

FLEXIBLE SPENDING ARRANGEMENTS			
	Health Care FSA	Dependent Care FSA	Individual Premium FSA
IRS Tax Code Section	§ 125	§ 129	§ 125
<b>What expenses are eligible for tax-free reimbursement?</b>	• Medical expenses, defined as the costs of "diagnosis, cure, mitigation, treatment, or prevention of disease, and for the purpose of affecting any part or function of the body".	• Eligible daycare expenses (care for qualifying person, which enables participant and spouse ability to work, look for work, or attend school full-time)	• Individual insurance for employee, spouse or dependents • Dental, vision, specific disease and disability
<b>Does Uniform Coverage Rule Apply?</b>	• Yes	• No	• No
<b>Does HIPAA apply?</b>	• Yes	• No	• Yes
<b>Does COBRA apply?</b>	• Limited obligation for excepted health care FSAs • Standard obligation for non-excepted health care FSAs	• No	• Not usually
<b>Does FMLA apply?</b>	• Yes	• No	• No
<b>Is Form 5500 reporting required?</b>	• Yes (100+ participants on the first day of plan year)	• No	• Not usually

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## Flexible Spending Arrangements (FSA)

- If FSAs are included, there are additional requirements in the Plan Document
  - Dependent Care/Individual Premium FSA – operations, claims and appeal rights
  - Health Care FSA – ERISA language and SPDs
  - Rollover/Grace period provisions, if applicable
  - Statement of which code sections apply

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## ERISA Basics

- ERISA provides protections to benefit plan participants
- ERISA Covers:
  - All **private sector** employers who maintain retirement or welfare benefit plans for their employees
  - No small employer exemption from ERISA
  - Only exception is for governmental employers and church-controlled plans

## ERISA Basics

### For ERISA to apply, Employer must sponsor an “employee welfare benefit plan”

- HSAs are usually not a welfare benefit plan
- Certain payroll practices (some disability, most vacation and sick leave) may not be a plan

### Truly voluntary benefits are not subject to ERISA, BUT

- If Employer is involved to more than a minimal degree, likely an ERISA Plan
- Employer may not offer “endorsement” of the program, and a lot of things are endorsement

### The Plan must provide “specified benefits”

- Benefits that pay for health, sickness, death, disability, prepaid legal, and a variety of other things
- Dependent care assistance plans (Dependent Care FSAs) are not subject to ERISA
- Transportation benefits are not subject to ERISA

## ERISA Basics

### If a plan is an ERISA Plan, then what?

#### Form 5500

The Plan must file an Annual Report (Form 5500) with the IRS and DOL, and participants must be given a Summary Annual Report (SAR)\*

*\*some small plans don't need to file*

#### Plan Document

A plan document is required, with specific components. Insurance policies don't usually satisfy these requirements

#### Summary Plan Description

An SPD must be provided to participants, with specific components. Benefits booklets don't usually satisfy these requirements

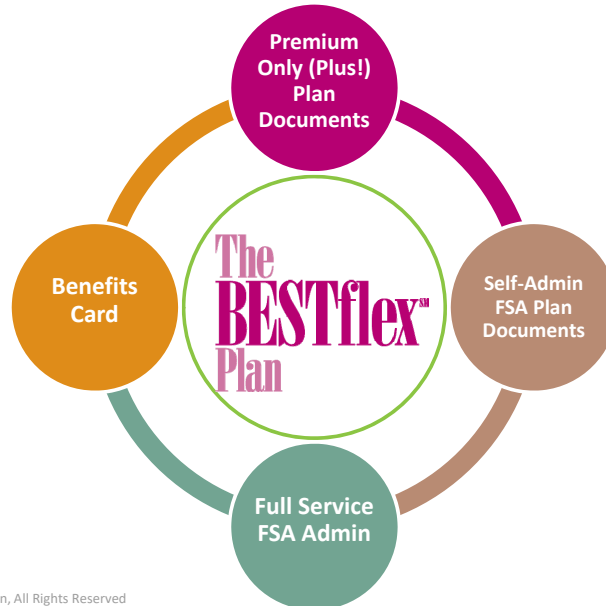
## ERISA Basics

- **To Wrap or Not to Wrap?**
  - A Wrap Plan is a single ERISA Plan
  - **Plan Document** includes all ERISA required provisions and incorporates by reference all insurance policies
  - **Summary Plan Description (SPD)** includes all of the information ERISA requires and refers participant to benefits booklets for detail about each benefit

## ERISA Basics

- **What about a Cafeteria Plan (BESTflex)?**
  - Cafeteria plans are not ERISA benefits, but often **relate to** one or more ERISA benefits
    - **Health Care FSA**
    - **Insurance premiums for ERISA plans**
  - Cafeteria plans must have a written **Plan Document** but do not have the same requirements as ERISA
  - **SPD** for convenience and for Health Care FSA

## A Solution for Everyone



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## Additional Solutions

COBRA  
Secure<sup>SM</sup>

Commute  
Ease

The  
EBC HRA<sup>SM</sup>

Billing  
Services

Simply  
HSA

Compliance  
Services

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## Thank you for Attending!

Any questions can also be addressed by e-mail or phone:

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