

## Employee Benefits Corporation | Boot Camp II Permitted Election Changes – Cost and Coverage Events

**Boot Camp II Permitted Election Changes – Cost and Coverage Events Q&A** – the following questions were asked during the two webinar sessions in May 2017.

*Please note that although we do not provide any continuing education credits for our webinars, we can provide a statement of your attendance that you can independently submit for credit.*

**Q: What do you mean when you refer to the FSA having these permitted election change rules in the contract?**

A: An employer is under no obligation to permit any or all of the Permitted Election Change Events as part of their cafeteria plan. However, if the employer wants to do so, it must specify in the cafeteria plan document which Permitted Election Change Events would allow a participant to make an election change during the plan year for premiums, health FSA and/or dependent care FSA outside of open enrollment.

**Q: Does “significant cost increase” apply to a dependent care FSA (DCFSA) only, not a health care FSA (HCFSA)?**

A: That is correct. “Significant Cost Increase” (as a Permitted Election Change Event) only applies to the DCFSA, not the HCFSA. While day care costs can change, participants are not able to change the HCFSA based upon a change in their out-of-pocket medical expenses throughout the plan year.

**Q: Can an employee drop coverage through his/her employer due to a spouse's change in coverage event even when it's not a change in status event?**

A: Permitted Election Change Events that impact eligibility under a plan are referred to as "Change in Status" Events. For purposes of our webinar, we have referred to Events that impact the cost or coverage of a plan or benefit as “Cost and Coverage” Events. A spouse's change in coverage is one type of Coverage Change Event. A spouse's eligibility change resulting in a change in coverage is a Change in Status Event. When a spouse has either a Cost or Coverage Event or a Change in Status Event and adds/drops the employee from his plan, this allows the employee to add/drop the plan at her employer and to change her related premium election. The significant distinction is that a Cost or Coverage Event does not allow the employee to change her health care FSA election, whereas a Change in Status Event does.

**Q: I'm a bit confused about events related to Medicaid eligibility. If one of my employees becomes newly eligible for Medicaid, can she drop our insurance mid-year? Alternatively, if one of my employees loses eligibility for Medicaid, can she enroll in our insurance mid-year?**

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A: Yes, if an employee becomes eligible for Medicaid or Medicare, she can drop her employer-sponsored health insurance mid-year. And, if she loses eligibility for Medicaid or Medicare, she can enroll in the employer-sponsored health insurance mid-year. Losing Medicare/Medicaid entitlement creates a HIPAA Special Enrollment Right to enroll in health insurance mid-year. However, whether the employee can start or stop paying her health insurance premiums pre-tax mid-plan year as a result of losing or gaining Medicaid or Medicare entitlement will be dictated by the terms of the cafeteria plan document.

**Q: If an employer adds a dental plan, would that only allow dental changes (enrollment or plan change for dental). Or, does it open it up for changes in all plans under Section 125?**

A: Although the IRS regulations are not entirely clear on this issue, the more conservative approach would be to only allow participants to drop existing employer-sponsored dental coverage and to change related pre-tax elections to match the cost of the new dental coverage.

**Q: For the example in slides 33-34, what if Joe enrolls the family in his employer's HDHP and contributes to an HSA? Since his wife can't drop her health FSA, will her employer need to roll the funds into a Limited FSA (dental & vision only)? If so, if her employer does not offer an HDHP/HSA medical plan, they may not have a Limited FSA set up with their FSA vendor.**

A: An employee or spouse adding an HDHP mid-year is not a Permitted Election Change Event that would allow either the employee or the spouse to change their health FSA election mid-year, or to switch from a general health FSA to a limited health FSA. In your example, the employee with a general health FSA would have to wait until open enrollment to change her election to a limited health FSA or to drop health FSA coverage altogether. Note that if either the employee or the spouse has a general health FSA, that is disqualifying coverage for either of them to contribute to an HSA, regardless of whether one or both individuals are covered by an HDHP.

**Q: If an employee enrolls in a group health plan during Open Enrollment and is then approved for health insurance through the VA, is this considered to be a permitted election change and can he drop his group coverage?**

A: No, this would not be a Permitted Election Change Event, and the employee would not be able to drop his employer-sponsored group health insurance coverage if he were to gain coverage through the VA (I assume you mean Tricare). Tricare is a governmental group health plan, so only a loss of that

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coverage would constitute a Permitted Election Change Event that would allow the employee to add the employer-sponsored group health insurance and make a mid-year cafeteria plan election change.

**Q: With regard to making a mid-year election change due to a spouse's open enrollment period that has a different plan year from your own, can a dropped spouse move over to their employer's plan mid-year when dropped from their spouse's employer plan during that spouse's open enrollment?**

A: Yes, if an employee is dropped from her spouse's health insurance plan, the employee can join her employer's health plan mid-year (assuming the health insurance carrier allows employees to join the plan mid-year). Whether that employee could pay her premiums on a pre-tax basis, however, would be determined by the terms of the cafeteria plan.

**Q: If an employee changes status from full-time to on-call and is no longer eligible for benefits, what is the protocol? Would the employee be able to drop their plan? Would they still be able to contribute to their FSA?**

A: If the employee loses eligibility for benefits, COBRA should be offered to the employee for any group health plans in which she participated. And, if the employee loses eligibility for the health FSA (as determined by the terms of the plan document), the employee would no longer be able to contribute new money to her health FSA via pre-tax deductions through payroll, but she may be able to continue participation in the health FSA under COBRA in some circumstances.

**Q: Can an FSA plan be written to allow changes to be retroactive, like health plan elections? If yes, would this work for marriage/divorce and other life events also?**

A: Retroactive health plan coverage changes are only allowed in cases of birth, adoption and placement for adoption (pursuant to HIPAA Special Enrollment Rights) and only apply to non-excepted benefits, such as health insurance and non-excepted health FSAs. If an employer also wants to allow retroactive elections under the cafeteria plan in these limited circumstances for its non-excepted benefits, the employer can do so, but it should be sure to specify in the cafeteria plan document that it will allow election changes mid-year that correspond with HIPAA Special Enrollment Events.

**Q: What should an employer do if an employee fails to tell the employer that he and his spouse divorced and the employer finds out 6 or 7 months after the date of the divorce? If the employee elected employee plus spouse coverage at the beginning of the plan year and did not submit an election change request within the required 30-day time period, should the employer not allow the**

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### **employee to change his/her cafeteria plan election? Is this the case even though the ex-spouse is not eligible to participate in the medical plan?**

A: The employer should contact the insurance carrier, and the carrier would likely drop the ex-spouse retroactive back to the date of the divorce (reversing claims paid, as well as premiums). Alternatively, the carrier might choose to simply terminate the ex-spouse now and not make any retroactive changes. In any event, however, the carrier should be notified as soon as possible. Technically, keeping an ex-spouse on a health insurance plan without notifying the carrier could be seen as fraud committed by the employee.

In addition, the ex-spouse may have to be offered COBRA, depending on whether the initial COBRA notice provided a certain timeframe for notification of divorce and whether the employee or ex-spouse notified the employer timely. The DOL's model COBRA initial notice provides a 60 day timeframe. The carrier should also be consulted when making the determination about whether to offer COBRA.

What would happen with respect to the cafeteria plan and pre-tax premiums paid for the coverage would depend on the terms of the cafeteria plan. If the cafeteria plan requires an employee to let the employer know within 30 days of a divorce if the employee wants to change their elections/premiums, if the employee does not let the employer know within 30 days, the employee would have to continue paying premiums for family coverage, even if the employee no longer has family coverage.

### **Q: If a spouse has a mid-year open enrollment and drops health coverage for you, then can you join your company's health plan mid-year? Would this be considered a qualifying event due to loss of coverage?**

A: The answer to this question is nuanced. Although the cafeteria plan might allow the employee to start taking premiums out of her paycheck mid-year if the spouse drops her from coverage and she wants to add coverage through her employer, there is no requirement that the carrier let her join the health insurance plan mid-year. There is no guarantee that the insurance carrier would allow her to join her employer's plan mid-year, because a spouse going through open enrollment (and dropping the employee) is not a HIPAA Special Enrollment Event. So, although the spouse dropping the employee would be a Coverage Event that **\*could\*** allow a change in elections and allow the employee to add coverage through her employer's health insurance, both the cafeteria plan AND the health insurance policy would have to specify that this event allows the employee to 1) start mid-year to pay health insurance premiums pre-tax (cafeteria plan document) and 2) enroll in the health insurance plan (health insurance plan/carrier).

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**Q: Under ACA, our insurance premium is based on age and that of 1.1.20XX, (in our case of plan year, 1.1. - 12.31). How is that possible to have an automatic premium increase during the plan year? I thought you couldn't increase premiums due to an age change in the middle of the year.**

A: A change in cost cannot occur due to an age change, but there could be other reasons why the carrier may increase or decrease the premium during the year and reasons why the employee's share of the premium cost may change during the year.

**Q: Please explain what you mean by a "stability period." Does it apply to us if we are not an ALE?**

A: Under the ACA, applicable large employers (employers with 50 or more full-time equivalent employees during a year) have certain reporting requirements, including that they must report the number of full-time employees they have. Employers can use one of two calculation methods to determine the number of full-time employees. One of these methods involves using a measurement period, administrative period and stability period. The measurement period is a period of time during which each employee's hours are tracked to determine if they are full-time; the administrative period is the period in which the employer makes an offer of health insurance coverage; and the stability period is the period of time during which a given employee would be considered full-time (regardless of whether their hours are reduced during that time period). If you are not an ALE, then none of this would apply to your organization.

**Q: Can an employee that is locked into the stability period drop coverage for a reduction in hours if they are already covered under a spouse's group health plan (double covered)?**

A: Technically, the IRS regulations require that an employee who has a reduction in hours of service below full-time during a stability period can only revoke their election of employer-sponsored group health plan coverage if the employee intends to enroll in another health insurance plan. However, depending on the facts and circumstances, it may be possible to interpret the regulation in a way that would not require the employee to enroll in brand new insurance coverage. Therefore, you may wish to consult your legal counsel on this matter.

**Q: According to the PowerPoint slides provided by EBC for Boot Camp Part 2, permitted election change events include "changes under other employer plan." The definition of "other employer plan" does not refer to a spouse's plan does it? I ask, because we have an employee who currently has EE + Spouse coverage under our company plan but wants to drop coverage mid-plan year and go onto the plan offered by her spouse's new employer. Would this be considered a change in status event for the employee, since basically it's like Open Enrollment on the spouse's plan? I know the spouse can change coverage; I need verification that the employee can change.**

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A: A spouse's plan would constitute another employer plan for purposes of this Permitted Election Change Event. If the spouse is going through open enrollment (or is newly eligible for health insurance) and adds the wife to his coverage, she could drop her existing health insurance coverage (assuming your insurance carrier allows mid-year drops) and revoke her pre-tax premium elections under your cafeteria plan (assuming your cafeteria plan allows it). If the spouse is newly eligible for benefits due to starting a new job, your employee could also drop/revoke her health FSA election, too, if the spouse enrolls her on his health insurance or elects a health FSA at his employer.

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