

EXPERT UPDATE



EXPECT AN EXPERT

Get Your Cafeteria Plan Documents in Order

By Shari Herrle, Director of Compliance

It is important to understand that the terms of every Cafeteria Plan (“Section 125 Plan”) must be set forth in a written plan document that contains the provisions required by the IRS under Code § 125. This document must also be formally adopted by the employer prior to the Plan’s effective date. Because Cafeteria Plan Documents are not routinely requested and examined by the IRS, they are often neglected by plan sponsors.

Plan Document Failures

Don’t be faced with a Plan Document failure – use this time to determine whether you have a Cafeteria Plan Document and whether it has been updated to reflect your current program and new IRS rules. Also make sure you have followed the appropriate steps to properly adopt the document.

Our compliance team is here to help you determine whether you have a compliant Plan Document, and if you need an updated document, we can provide one at no cost. We will provide sample materials for the adoption process as well. Start by determining whether a Plan Document failure may exist.

Failure Examples:

- 1) No written Plan Document or an unsigned draft;
- 2) A Plan Document that has never been properly adopted;
- 3) An old Plan Document that has never been updated for changes in the law or for newly offered benefits;
- 4) A Plan Document that is incomplete or inaccurate, including one that does not correctly describe the correct plan sponsor, include covered affiliated businesses, etc.

Please note that the information contained in this document is designed to provide authoritative and accurate information, in regard to the subject matter covered. However, it is not provided as legal or tax advice and no representation is made as to the sufficiency for your specific company’s needs. This document should be reviewed by your legal counsel or tax consultant before use.

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Communicating Certain Cafeteria Plan Information to Participants

As a plan sponsor, you must also determine whether you are providing information to employees about the Plan. While Code Section 125 does not impose any specific participant disclosure requirements on Cafeteria Plans, ERISA, which governs a plan sponsor's welfare benefits, does require that certain information be disclosed. The following topics should be included in a Cafeteria Plan Summary Plan Description (SPD) if this information is not communicated to employees in an ERISA SPD:

- Rules governing participation;
- Enrollment and re-enrollment procedures;
- Irrevocability of elections and the circumstances under which midyear election changes are permitted;
- The use-or-lose rule, including any grace period or health FSA carryovers offered under the plan; and
- The potential impact of salary reductions on Social Security and other compensation-based benefits (e.g., group term life insurance).

The Cafeteria Plan materials that HBI can provide at no cost will include a customized Plan Document, SPD, sample Adoption Agreement and sample Employee Salary Reduction Agreement (election form). Feel free to contact your analyst or consultant for more information.

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