

CLIENT ALERT

Brought to you by:



Can I drop my group coverage and enroll in Obamacare?
Can I drop my spouse/children from my group coverage and enroll them in Obamacare?

We hear these questions almost every day. This Client Alert will address two very important and often confused issues:

WHEN CAN A PERSON DROP THE EMPLOYER'S COVERAGE AND ENROLL IN THE MARKETPLACE? And

WHO IS ELIGIBLE FOR A SUBSIDY IN THE MARKETPLACE?

WHEN CAN A PERSON DROP THE EMPLOYER'S COVERAGE AND ENROLL IN THE MARKETPLACE? (*)

The IRS introduced Notice 2014-55 which addresses two specific situations in which a participant may wish to drop coverage under their § 125 cafeteria plan and enroll in a Qualified Health Plan (QHP) through the Health Insurance Marketplace.

1. REDUCTION IN HOURS

An employee's whose hours are reduced below 30 hours whether or not the reduction in hours results in a loss of coverage. (Note – NJ employers under 50 lives may still be using 25 hours)

2. SPECIAL ENROLLMENT RIGHTS/OPEN ENROLLMENT

An employee may drop the employer's coverage during the Marketplace Annual Open Enrollment and enroll in a Marketplace plan.

(*) This answer assumes that a Section 125 POP plan is inforce. (See Footnote about Section 125 POP Plans at the end of this Client Alert)

GUIDANCE ON IRS NOTICE 2014-55

A cafeteria plan may allow an employee to prospectively revoke an election of coverage under a group health plan that is not a health FSA and that provides minimum essential coverage (as defined in § 5000A(f)(1)) provided the following conditions are met:

REDUCTION IN HOURS

Conditions for revocation due to reduction in hours of service

(1) The employee has been in an employment status under which the employee was reasonably expected to average at least 30 hours (25 for NJ small employers) of service per week and there is a change in that employee's status so that the employee will reasonably be expected to average less than 30 hours (25 for NJ small employers) of service per week after the change, even if that reduction does not result in the employee ceasing to be eligible under the group health plan; and

(2) The revocation of the election of coverage under the group health plan corresponds to the intended enrollment of the employee, and any related individuals who cease coverage due to the revocation, in another plan that provides minimum essential coverage with the new coverage effective no later than the first day of the second month following the month that includes the date the original coverage is revoked.

SPECIAL ENROLLMENT RIGHTS/OPEN ENROLLMENT

Conditions for revocation due to enrollment in a Qualified Health Plan

Up until IRS Notice 2014-55, **the open enrollment period of the Marketplace was not a Special Enrollment Right under a § 125 cafeteria plan, nor was a group health plan's non calendar year open enrollment period a considered a Special Enrollment Period by the Marketplace.**

This meant that an individual enrolled through a cafeteria plan in a group health plan with a non calendar plan year would likely not be able to synchronize the change in coverage to avoid an overlapping period of coverage or a period without coverage because of how Special Enrollment Rights were defined by both the employer's plan and the Marketplace. This Notice allows an employee (and all covered dependents) to drop coverage during the Marketplace Open Enrollment and enroll themselves, and their dependents into a Marketplace plan.

In both instances, a cafeteria plan may rely on the reasonable representation of an employee that the employee and related individuals have enrolled or intend to enroll in another plan that provides minimum essential coverage. New coverage must begin no later than the first day of the second month following the month that includes the date the original coverage is revoked.

The consistency requirement that applies to mid-year cafeteria plan election changes is not affected. So midyear election changes must be consistent with the qualifying event.

AMEND PLAN DOCUMENTS

To allow the new permitted election changes, a cafeteria plan must be amended to provide for such election changes. We suggest you contact your Section 125 Plan Document administrator to discuss this amendment if you have not already done so.

Resource Information: <http://www.irs.gov/pub/irs-drop/n-14-55.pdf>

WHO IS ELIGIBLE FOR A SUBSIDY IN THE MARKETPLACE?

This is still a widely misunderstood issue. Very simply put, if the employer offers an affordable plan that meets the minimum value guideline, then no one in the family is eligible for a subsidy in the Marketplace.

Affordable - If the premium for single coverage in the lowest cost plan that meets the minimum value guidelines is less than 9.5 percent of a person's household income, then no one in the family who is eligible to join the employer's plan can qualify for a premium tax credit, no matter how expensive the premiums are for a family plan.

Minimum Value – The plan is expected to pay, on average, 60% of charges.

EMPLOYERS HAVE AN OBLIGATION TO TELL THEIR EMPLOYEES WHETHER OR NOT THE PLAN IS AFFORDABLE.

The Marketplace Notice is still required for all new hires. All employers subject to the Fair Labor Standards Act were required to send their employees the Marketplace Notice prior to October 1, 2013, thereafter; all new hires are to be provided with the Marketplace Notice within 14 days of their hire date. There is nothing in the Marketplace Notice technical release that requires an employer to provide an annual Marketplace Notice. As a courtesy to your employees you may want to provide information to them as to whether or not their coverage is considered affordable.

Affordability Resource - <http://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Questions-and-Answers-on-the-Premium-Tax-Credit>

Marketplace Notice Resource - <http://www.dol.gov/ebsa/newsroom/tr13-02.html>

All of these topics have been addressed in more detail in prior Client Alerts, visit, www.chb-group.com and click on Client Alerts for more information.

(*) Section 125 POP Plans - Most employers offer coverage in their health plans through a Section 125 Premium Only Plan – thus allowing your employees to pay for their coverage on a Pre-Tax basis. If you are allowing your employees to pay for their contributions on a pre-tax basis then you are offering a § 125 cafeteria plan as defined by the IRS and must have the required documentation, also called a Section 125 Premium Only Plan. Please contact your accountant, payroll company or us if you are not sure if you are in compliance.

DISCLAIMER: This e-mail/Client Alert is informational only and is not meant to advise you of your entire obligations under Section 125 or the ACA. This information is not considered insurance, legal or tax advice.

If you would like more information, please do not hesitate to contact our office, your accountant or your legal counsel.