

CLIENT ALERT

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IMPORTANT INFORMATION ABOUT SECTION 125 PREMIUM ONLY PLANS

Anytime you allow employees to pay for their benefit contributions on a pre-tax basis you are offering a Premium Only Plan (POP) under Section 125 of the Internal Revenue Code (IRC).

While this is considered accounting/payroll issue, we are discovering that many employers are not in compliance as defined by the IRS. Many employers had the proper documentation at one time, but documents have been lost or need updating or have not been distributed to the employees. We highly recommend that if you ensure that you are fully compliant.

The IRS is very clear that Premium Only Plans must meet certain criteria:

- There must be a Plan Document which describes the POP Plan
- There must be a Summary Plan description that is provided to each eligible employee
- There must be an irrevocable election form
- There must be a resolution to offer a Section 125 plan
- Only eligible employees (as defined by the IRS) may participate (*)
- The plan may not discriminate in favor of highly compensated or key employees
- The plan must be non-discriminatory

(*)As a general rule, people who are considered by the Internal Revenue Service to be "self-employed" cannot participate in Section 125 plans, although employees of self-employed may participate. Examples of what is considered self-employed are:

- Sole proprietors of sole proprietorships
- Partners of partnerships
- Members of LLCs ("member" is the usual term for an LLC owner)
- More-than-2%-shareholders of S-Corporations (Stock owned by the owner's spouse, children, grandchildren and/or parents are treated as if owned by the member). Spouses, Children, grandchildren and/or parents of "more than 2% shareholders cannot participate in an S Corporation's Section 125 Plan even if they are considered bona fide employees. The employees of an S Corporation are eligible.

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