



New ftwilliam.com Welfare
Plan Documents Overview

8/29/2017

Two Types of Section 125 Plans

- **Premium-Only Plan:** the Plan's sole benefit is an election between cash (for example, salary) and payment of the employee's share of the employer-provided accident and health insurance premium. (26 C.F.R. 1.125-1(a)(5))
 - Premium-Only Plans are eligible for cafeteria plan discrimination test safe harbor.
 - Including any other benefits could take the plan out of POP safe harbor.
- **Cafeteria Plan:** allows eligible employees to choose between cash and qualified benefits. Permissible benefits are listed in the Section 125 regulations.



What Laws Apply?

- Tax Code (Primarily Section 125)

And, depending on the type of benefits offered:

- ERISA
- FMLA
- COBRA
- HIPAA
- Affordable Care Act (ACA)

ERISA

- Only applies to benefits offered under the Cafeteria Plan that are “employee benefit plans” - either employee welfare benefit plans or employee pension plans.
- Generally only the health flexible spending account and 401(k) benefits are subject to ERISA (exception for governmental and church plans). But HSA and other benefits can become subject to ERISA if they are not exempt from ERISA.
- Can treat the benefits offered under a cafeteria plan document as “separate” plans such that only the benefits that satisfy the definition of “employee benefit plans” must comply with ERISA, rather than the entire cafeteria plan.

ERISA

- Benefits offered under a cafeteria plan that are subject to ERISA must satisfy ERISA's disclosure and reporting requirements.
- A summary plan description (SPD) is required for the ERISA-governed benefits. For non-ERISA benefits, the sponsor can provide a summary, but it does not have to comply with ERISA's SPD requirements.
- No Form 5500 required for cafeteria plans. No Plan number is required. However, a sponsor can assign a plan number for internal recordkeeping.

FMLA

- If an employer is subject to FMLA, then it must administer the cafeteria plan in accordance with FMLA.
- A few things to note about FMLA:
 - FMLA only applies to cafeteria plan/POP if the employer is subject to FMLA.
 - As a general matter, employees who are eligible for FMLA must be allowed to continue to participate in health benefits.

COBRA & HIPAA

■ COBRA

- Health FSAs are subject to COBRA (except those sponsored by churches and small employers).
- The extent to which COBRA applied depends on the design of the health FSA. Some health FSAs qualify for the limited COBRA exception.

■ HIPAA

- Applies to most health FSAs.
- Exception for self-funded, self-administered health FSAs with fewer than 50 participants.



Cafeteria Plan/POP Eligibility

- Enrollment in Section 125 plans is limited:
 - Prior to the Plan Year (annual enrollment)
 - Change in Status
 - New Hires

(Exception for Health Savings Accounts)