



**EMPLOYEE BENEFIT SERVICES**

# COMPLIANCE

## **QUICK REFERENCE GUIDE**



# IMPORTANT INFORMATION

The information presented in this reference guide was collected from various resources, including federal agency websites like the Department of Labor's website, and compiled for your convenience. The information is not exhaustive and may be subject to change. Please consider using it for educational purposes only. It should not be considered legal advice. For information on how to resolve your fact-specific issue, please consult with a licensed employee benefits attorney.

# SECTION 125 PLAN

## COMPLIANCE

HOW TO STAY COMPLIANT:	UPON HIRE	ONGOING	UPON TERMINATION/QUALIFYING EVENT
ADMINISTERING THE PLAN	Elections are annual unless qualifying event.		
COVERAGE	Understand qualified versus non-qualified benefits.		
ELIGIBILITY	Only current or former employees can make elections, not spouses/dependents.		
RECOMMENDATIONS	<ul style="list-style-type: none"><li>• Keep an updated written plan document.</li><li>• Don't allow pre-tax contributions in the absence of a plan document.</li></ul>		
KEEP EMPLOYEES HAPPY	<ul style="list-style-type: none"><li>• Make election forms clear and include consent language.</li><li>• Explain use-it-or-lose-it and annual contribution maximums.</li><li>• Remind employees that a Section 125 plan allows the district to offer choice.</li><li>• Participation reduces tax liability.</li></ul>		

## QUALIFIED VS UNQUALIFIED BENEFITS

### QUALIFIED

- Medical plan coverage
- Dental and vision coverage
- Health and dependent care Flexible Spending Account (FSA)
- HSA
- Life insurance
- Disability benefits
- Adoption assistance

### UNQUALIFIED

- Scholarship programs
- Long-term care insurance or services
- Health Reimbursement Arrangement
- Employer-provided meals and lodging

# MID-YEAR CHANGES

## ASK 4 KEY QUESTIONS TO VERIFY IF A MID-YEAR CHANGE IS PERMISSIBLE:

1

Is the change allowed under Section 125? There are 13 situations where mid-year changes are permitted.

3

Is the change allowed under the employer's Section 125 plan?

2

Is the change consistent with the event prompting the change?

4

Is the change permitted under the underlying plan? (i.e. the medical plan, dental plan, etc.)

### 1. Changes in status:

- Change in legal marital status
- Change in number of dependents
- Change in dependent's eligibility
- Change in employment status
- Change in residence (but only if it affects eligibility for Section 125 plan or underlying benefit plan)
- Commencement or termination of adoption proceedings

*Section 125 plans also allow participants to change elections based on the following:*

### 2. Loss of health plan coverage under a government or educational institution's plan.

- Loss of SCHIP or Medicaid coverage.
- Change in eligibility for premium assistance under the SCHIP program.

### 3. HIPAA special enrollment rights

- Loss of eligibility for coverage under a group health plan.
- A new dependent acquired through marriage, birth or adoption.

### 4. COBRA qualifying event

### 5. Judgments, decrees or court orders

### 6. Medicare or Medicaid entitlement occurring midyear

## MID-YEAR CHANGES CONTINUED...

### **7. FMLA leaves can become complicated when it interacts with Section 125. A number of options can apply:**

- If an employee drops coverage for an approved FMLA leave, that coverage must be reinstated when the employee returns.
- The employer can allow the employee to continue coverage through the leave and provide various ways to pay for that coverage when the employee returns to work i.e.; pay as you go, pre-pay or catch up when the employee returns to work.

### **8. HSA contributions**

- Changes must be made in advance, employers must allow these changes at least monthly and rules must be outlined in the plan document.

*Section 125 plans also allow participants to change elections except for health FSA elections based on the following:*

### **9. Significant cost changes**

- Employees can choose to pay the new contribution or alter their coverage.
- The employee can drop coverage only when no other similar coverage option is available.
- An employee cannot drop coverage if a similar coverage option is available.

### **10. Insignificant cost changes**

- Allow automatic increases or decreases in elective contributions.

### **11. Significant coverage reduction**

- If coverage is reduced or lost, an employee can choose alternative coverage. If no other option is available, the employee can decline coverage.

### **12. Addition or improvement of benefit package option**

- Employers must allow employees to elect the new benefit even if they previously declined coverage. Employees can also switch from an alternative plan to the new plan option.

### **13. Changes in coverage under another employer's health plan**

- If a spouse's plan significantly curtails coverage or significantly increases cost.
- If spouse's plan has a different open enrollment from your plan.

# FAMILY AND MEDICAL LEAVE ACT

## COMPLIANCE

HOW TO STAY COMPLIANT:	UPON HIRE	ONGOING	UPON TERMINATION/QUALIFYING EVENT
ADMINISTERING THE PLAN	<ul style="list-style-type: none"> <li>• Notice of eligibility within five business days of the initial request for leave.</li> <li>• Provide a rights and responsibilities notice.</li> <li>• Notice of Designation within five business days of having enough information to determine leave is FMLA qualifying.</li> <li>• Leave does not need to be consecutive.</li> </ul>		
COVERAGE	Qualifying leaves include: <ul style="list-style-type: none"> <li>• The birth or placement of a child for adoption or foster care.</li> <li>• Care for a family member with a serious health condition.</li> <li>• The employee's own serious health condition which makes the employee unable to perform the functions of his/her job.</li> </ul>		
ELIGIBILITY	FMLA applies to employees that have at least 1,250 hours of service during the 12 months before leave begins.	<ul style="list-style-type: none"> <li>• Maintain a working understanding of eligibility requirements and qualifying leaves. Strong payroll dependency for eligibility determinations.</li> <li>• Post general notices that are clear, concise, easily accessible and visible at ALL employer locations.</li> </ul>	
RECOMMENDATIONS	<ul style="list-style-type: none"> <li>• Maintain an up-to-date policy.</li> <li>• Maintain records for three years.</li> <li>• Records must be confidential.</li> <li>• Consider engaging with an experienced partner.</li> </ul>		
KEEP EMPLOYEES HAPPY	<ul style="list-style-type: none"> <li>• Conduct eligibility determinations swiftly.</li> <li>• Do not interfere, deny, discriminate or retaliate.</li> <li>• Avoid miscommunication about what FMLA entails.</li> <li>• Restore the employee to the same or equivalent job.</li> </ul>		

## QUALIFYING FAMILY MEMBERS

### PARENT

- Birth parent
- Adoptive parent
- Step or foster parent
- In loco parentis – someone who stood in as a parent

\* Does not include in-laws

### SPOUSE

- Husband or wife as defined by the state in which the marriage took place

### CHILD

- Biological
- Adopted
- Foster
- Stepchild
- Legal ward
- A child of a person standing in loco parentis – must be minor child or adult with a mental or physical disability

# COBRA

## COMPLIANCE

HOW TO STAY COMPLIANT:	UPON HIRE	ONGOING	UPON TERMINATION/QUALIFYING EVENT
ADMINISTERING THE PLAN	General notice due within 30 days when employer-sponsored coverage is initially offered.	Tracking payments and life-cycle	Election notice must be provided to beneficiary within 44 days of the date of the qualifying event. A qualified beneficiary must notify the employer within 60 days of the qualifying event.
COVERAGE	Only qualified beneficiaries are eligible, including people who were enrolled in employer-sponsored coverage who would lose coverage due to a qualifying event.		
ELIGIBILITY	Qualifying events are circumstances that cause an individual to lose employer-sponsored coverage. These differ for employees and their spouses or dependents.		
RECOMMENDATIONS	<ul style="list-style-type: none"><li>• Educate employees to avoid misunderstandings.</li><li>• Don't forget COBRA enrollees at open enrollment.</li><li>• Look for tools and resources to help.</li></ul>		
KEEP EMPLOYEES HAPPY	<ul style="list-style-type: none"><li>• Distribute general notices annually.</li><li>• Make notices clear and concise.</li><li>• Remind employees they must respond to the election notice and elect COBRA coverage by the 60th day after the written notice is sent, or they will lose their right to COBRA benefits.</li><li>• Consider including in open enrollment materials.</li><li>• Consider when, if ever, you would like to extend the COBRA life-cycle.</li></ul>		

## QUALIFYING EVENTS

Qualifying events are circumstances that cause an individual to lose employer-sponsored coverage.

These differ for employees and their spouses or dependents.

### EMPLOYEES

- Termination, except gross misconduct (18 months)
- Going part-time (18 months)

### DEPENDENTS

- Termination, except gross misconduct (18 months)
- Employee going part-time (18 months)
- Divorce or separation (36 months)
- Death of employee (36 months)
- Loss of dependent-child status (36 months)

### SPOUSES

- Termination, except gross misconduct (18 months)
- Employee going part-time (18 months)
- Divorce or separation (36 months)
- Death of employee (36 months)

\* Separate rules apply for employees who become Medicare eligible

# AFFORDABLE CARE ACT

## COMPLIANCE

HOW TO STAY COMPLIANT:	UPON HIRE	ONGOING	UPON TERMINATION/QUALIFYING EVENT
ADMINISTERING THE PLAN	Coverage requirement applies if it is reasonable to assume the employee will be full time.	<ul style="list-style-type: none"> <li>• 30 hours of service per week or 130 hours per month.</li> <li>• Employee is deemed full time for entire stability period.</li> </ul>	Offer COBRA
COVERAGE	<ul style="list-style-type: none"> <li>• Must offer to at least 95% of full-time employees.</li> <li>• Must include dependents in coverage offer.</li> <li>• Must meet affordability and minimum value requirements or penalties apply.</li> </ul>		
ELIGIBILITY	Variable hour employees must be assessed during the administrative period to determine eligibility for benefits.		
RECOMMENDATIONS	<ul style="list-style-type: none"> <li>• Disseminate notices correctly.</li> <li>• Don't forget about contracted employees — fees may pass through.</li> <li>• Don't assume it's going away and know potential penalties.</li> <li>• Consider a trusted partner to assist with your tracking and reporting.</li> </ul>		
KEEP EMPLOYEES HAPPY	<ul style="list-style-type: none"> <li>• Understand and educate your employees on the impacts that notices and assessments may have on their eligibility for premium tax credits.</li> <li>• Educate your employees, especially those working year round.</li> </ul>		