



EMPLOYEE BENEFITS PRACTICE

ALERT

CAFETERIA PLAN AMENDMENTS

By Susan Foreman Jordan and Seth I. Corbin

Among the many changes made by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 was the extension of favorable tax treatment for employer-provided health insurance and medical expense reimbursement to include any child of an employee who has not yet attained age 27 as of the end of the tax year. Obviously, this may affect the type or level of coverage employees will select and has additional significance for those employees who participate in Section 125 Cafeteria Plans. The IRS intends to amend the applicable regulations to add to those “change in status” events — which justify a mid-year change in cafeteria plan benefit elections — a child under the age of 27 becoming newly eligible for coverage or becoming eligible for coverage beyond the date that child otherwise would have lost coverage.

All Section 125 Cafeteria Plans must be amended to conform to this new law. Typically, cafeteria plan amendments may be implemented only on a prospective basis. However, in this case, the IRS (in Notice 2010-38) has authorized retroactive amendments to ratify

implementation of the new coverage rules by cafeteria plans earlier this year. These amendments must be adopted no later than December 31, 2010, and must be effective as of (but no later than) the first date in 2010 as of which employees were permitted to make pre-tax salary reduction elections to cover children under the age of 27. Unless an earlier date is specified, the change takes effect the first plan year beginning after September 23, 2010. (For cafeteria plans that operate on a calendar year basis, this default effective date will be January 1, 2011.)

If you maintain a Section 125 Cafeteria Plan, we recommend you contact your provider or employee benefits attorney before the end of 2010 to ensure compliance with the new law.

If you have any questions regarding the information contained in this Alert, please contact Susan Foreman Jordan at 412.394.5543 or sjordan@foxrothschild.com, Seth I. Corbin at 412.394.5530 or scorbin@foxrothschild.com or any member of Fox Rothschild’s Employee Benefits and Executive Compensation Practice Group.

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