

When Employees Can—and Can't—Change Benefit Plan Contributions

Elective contributions can be altered midyear for HSAs but not for health FSAs

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May 7, 2020

updated May 12, 2020

Update: IRS Allows Mid-Year Enrollment and Election Changes for Health Plans and FSAs

On May 12, the IRS released two notices allowing for temporary changes affecting employees' ability to enroll in, and to change pretax contributions for, employer-sponsored health plans, health flexible spending accounts (health FSAs) and dependent care flexible spending accounts (dependent care FSAs).

Health Plan Enrollments and Elections

In IRS Notice 2020-29 (<https://www.irs.gov/pub/irs-drop/n-20-29.pdf>), the agency said it would allow increased flexibility regarding mid-year election changes for group health plans and FSAs. For instance, employees will now be able to:

- **Enroll in employer-sponsored health plan during the plan year** by making a new election. Employees may do so even if they had previously declined enrollment.
- **Switch health plans or tiers within plans.** Employees will be able to drop current coverage to enroll in different coverage offered by the same employer or to change from single coverage to family coverage, for instance.

FSA Enrollments and Elections

For both health FSAs and dependent care FSAs, used to fund for caregiving expenses with pretax dollars, employees will be able to enroll in the FSA, drop FSA coverage, and increase (within the annual limit) or decrease existing FSA payroll-deferred contributions during 2020.

FSA Use-it-or-Lose-It Rules

For plan years ending before Dec. 31, 2020, employers can amend a health or dependent care FSA plan to permit participants to "spend down" through year-end 2020 any remaining amounts that would otherwise be forfeited.

Increased Carryover Cap

IRS Notice 2020-33 (<https://www.irs.gov/pub/irs-drop/n-20-33.pdf>), also released May 12, increases the amount of funds that plans can carry over without penalty at the end of the year for health FSAs, for plans that use the carryover option.

The notice raises the carryover amount for 2020 to \$550, up from \$500.

These changes had been advocated by the Society for Human Resource Management.

Original article appears below:

The COVID-19 pandemic has upended not only employees' lives but also the expectations they had at the start of 2020 for annual spending through their benefit programs. Those who wish to change their pretax elective, payroll-deferred contributions for such things as dependent care or elective surgeries will find that some plans can be changed throughout the year while others may be changed only when employees have had a recent "qualifying life event."

Different Plans, Different Rules

Some midyear elective-contribution changes have long been permitted. For instance, contribution changes to 401(k) or similar defined contribution retirement plans, and to health savings accounts (HSAs), can be made at any time for any reason. Employers may limit changes to once per month for administrative purposes (<https://www.benefitsresource.com/blog/are-mid-year-changes-possible/>), however, according to Benefit Resource Inc. (BRI), an administrator of tax-free benefits programs.

The opposite holds for employer-sponsored group health, dental and vision plans. Under tax code Section 125, elective contributions can only be changed within 30 days of a qualifying event as determined by the IRS, such as marriage, divorce, job change, birth or adoption of a child, or when a dependent child reaches age 26.

[SHRM members-only HR Q&As: When can employees make midyear election changes to their group health insurance? (www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/midyearelectionchangeshealthinsurance.aspx)]

While the rules for health, retirement and other core benefits are widely known, employee confusion is more common concerning voluntary or supplemental benefits.

Health FSAs

As with group health plans, employees can only make changes to a health flexible spending account (health FSA) if they've had a qualifying event.

This is causing health FSA participants problems because "the COVID-19 pandemic has changed the practice of medicine, with people less willing to go to doctors' offices and nonelective procedures being cancelled or postponed," said William Sweetnam, legislative and technical director at the Employers Council on Flexible Compensation (ECFC), which represents sponsors of account-based benefit plans. "Employees made salary-reduction elections in 2019 to their flexible spending arrangements anticipating that those funds would be used to pay medical expenses in 2020, and now they find that it will be difficult or impossible to use those funds for medical services in 2020."

On April 16, the Society for Human Resource Management (SHRM) asked the IRS to view the pandemic as a qualifying life event (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/shrm-asks-irs-for-health-plan-compliance-relief-during-coronavirus-pandemic.aspx) that would allow plan participants to make a midyear adjustment to the amount of pretax dollars they put into their health care FSA.

"Many employers are struggling with employee requests for election changes and whether such a change would be permitted under IRS guidance," wrote Emily Dickens, SHRM corporate secretary, chief of staff and head of government affairs.

SHRM also asked the IRS to increase the annual \$500 carryover limit for health FSAs, for plans that use the carryover option. Employees should not be penalized because their anticipated annual medical expense estimates need to be adjusted, Dickens noted.

Sweetnam would also like to see guidance temporarily allowing employees to change their health FSA salary-reduction elections.

Attorneys at the IRS and the Treasury "understand the issues at hand, and they are considering this and other issues relating to the health care and economic impact of the pandemic; however, it is hard to say what the agencies can do," he noted.

For 2020, employees can contribute \$2,750 to a health FSA (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/2020-FSA-Contribution-Cap-Rises-to-2750.aspx), including a limited-purpose FSA restricted to dental and vision care services, which can be used in tandem with an HSA.

SHRM RESOURCE SPOTLIGHT

Coronavirus and COVID-19 Resources (www.shrm.org/ResourcesAndTools/Pages/communicable-diseases.aspx)

Dependent Care FSAs

Because of the pandemic "some employees have young children at home due to the closure of day care facilities (<https://www.bsk.com/news-insights/dependent-care-fsa-issues-during-the-pandemic>) and other COVID-19 related reasons," noted Stephen Daley, an attorney with Bond, Schoeneck & King in Syracuse, N.Y. "Other employees may be working fewer hours and, therefore, have lower than expected dependent care expenses. Employees in these circumstances often ask about changing the amount of their pretax contributions to their dependent care flexible spending accounts."

Fortunately, he added, midyear "election rules are applied in a more liberal manner" to dependent care FSAs than to health FSAs.

For dependent care FSAs, "the rules allow changes in pretax contributions under circumstances where the need for dependent care changes midyear. Therefore, an employee who is working from home or working less and does not need, or have access to, dependent care can be allowed to change (stop or reduce) his or her pretax contribution election," Daley noted.

If employees subsequently return to their regular onsite work schedule, "another election change can be allowed to increase contributions, assuming that the need for dependent care increases."

The dependent care FSA maximum (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/2020-FSA-Contribution-Cap-Rises-to-2750.aspx#dfsa), which is set by statute and not adjusted annually for inflation, is \$5,000 a year for individuals or married couples filing jointly, or \$2,500 for a married person filing separately, subject to earned income limits.

Commuter Benefit Plans

Employees use commuter benefit plans to pay mass transit or parking costs, funded monthly by employees and/or employers with pretax dollars. Changes can be made at any time for these plans, as employees don't need to wait until open enrollment to set a new election. However, there may be monthly cutoffs for changes to apply for a given month.

"During this time, when cash flow may be tight and commuting needs are light, employees can adjust the money in the commuter accounts down to zero (<https://www.benefitsresource.com/blog/do-you-need-to-make-benefit-changes-because-of-covid-19/>)," according to BRI.

"When commuting starts up again, it is advised that employees set up money in their commuter account two weeks before they will need the money."

For 2020, the monthly limit is \$270 on pretax contributions (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/2020-FSA-Contribution-Cap-Rises-to-2750.aspx#commuting) (employee plus employer) for qualified transportation benefits, although employers may set a lower limit for their plans.

Related SHRM Articles:

2020 Benefit Plan Limits and Thresholds Chart (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/irs-index-limits-chart-2020.aspx), *SHRM Online*, November 2019

2020 FSA Contribution Cap Rises to \$2,750 (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/2020-fsa-contribution-cap-rises-to-2750.aspx), *SHRM Online*, November 2019

401(k) Contribution Limit Rises to \$19,500 in 2020 (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/2020-irs-401k-contribution-limits.aspx), *SHRM Online*, November 2019

2020 HSA Limits Rise Modestly, IRS Says (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/IRS-2020-hsa-contribution-limits.aspx), *SHRM Online*, May 2019

Commuter Benefits Are an Investment in Employees (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/commuter-benefits-are-an-investment-in-employees.aspx), *SHRM Online*, October 2019

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