LEGAL UPDATE

Cafeteria Plan Deadline for CAA Amendments is Dec. 31, 2022

Employers that implemented the optional, temporary relief for cafeteria plans provided under the Consolidated Appropriations Act, 2021 (CAA) and IRS guidance must adopt plan amendments by **Dec. 31, 2022**. As a reminder, employers are permitted to retroactively amend their cafeteria plans for this temporary relief, so long as:

- The amendment is adopted by the last day of the first calendar year following the plan year in which it is effective; and
- The plan operates consistently with the amendment terms until the amendment is adopted.

Temporary Relief for Health FSAs and DCAPs

During 2020 and 2021 plan years, the CAA provided flexibility for health flexible spending accounts (FSAs) and dependent care assistance programs (DCAPs) with respect to the following:

- Carryovers of unused amounts remaining at the end of the plan year;
- Extension of the time period for incurring claims;
- Post-termination reimbursements from health FSAs for employees who ceased participation during the calendar year; and
- Special rules for dependents who "aged out" of DCAP coverage during the pandemic.

Mid-year Election Change Relief

The CAA and IRS guidance allowed employees to make prospective mid-year election changes even if they had not experienced a change in status. IRS Notice 2021-15 clarified that employers could decide how long to permit mid-year election changes with no change in status during the plan year, and could limit the number of election changes during the plan year that were not associated with a change in status.

Amendment Deadlines

Calendar Year Plans

The amendment adoption deadline of Dec. 31, 2022 applies to changes for the **2021 plan year** for calendar year plans. The amendment adoption deadline for the 2020 plan year was Dec. 31, 2021.

Non-Calendar Year Plans

The amendment adoption deadline of Dec. 31, 2022 applies to changes for the **2020 plan year** for non-calendar year plans. For the 2021 plan year, non-calendar year plans have until Dec. 31, 2023 to adopt the amendments.

Employers are permitted to retroactively amend their cafeteria plans so long as the amendment is adopted by Dec. 31, 2022.

Provided to you by **Apex Benefits**

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