
A TECHNICAL UPDATE FOR FLEXSYSTEM | REFERENCE NUMBER: FX 040 | LAST UPDATED: 11212013

TOPIC: Election Changes under a Section 125, Cafeteria Plan

The following is a description of events allowing for election changes under Section 125 of the Internal Revenue Code. Final and Proposed Regulations were issued in March 2000. This is a general description of the qualifying status events and actual verbiage of the proposed and final regulations under Section 125 of the Internal Revenue Code should be relied upon.

The following changes in status events apply to health and term life insurance as well as to the dependent care and medical flexible spending account.

In addition to the occurrence of an event below, the election change must also satisfy the consistency requirement. A change satisfies the general consistency requirement *if the election change is on account of and corresponds with a change that affects eligibility for coverage under an employer's plan*. Exceptions to this requirement only apply to group term life or long term disability coverage for marital status or employment change in status events.

1. Change in an employee's legal marital status – this includes marriage, divorce, death of spouse, legal separation and annulment.
2. Change in number of dependents - this includes birth, adoption, placement for adoption and death.
3. Change in employment status - if any of the following events change the employment status of employee, the employee's spouse or the employee's dependent would qualify: a termination or commencement of employment; a strike or lockout; a commencement of or return from an unpaid leave of absence; and a change in worksite. In addition, if the eligibility conditions of the Cafeteria Plan or other employee benefit plan of the employer or the employee, spouse or dependant depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the Plan, then that change constitutes a change in employment under this paragraph. For example, if a Plan applies only to salaried employees and an employee switches from salaried to hourly paid, with the consequence that the employee ceases to be eligible for the Plan, then that change constitutes a change in employment status.
4. Dependent satisfies or ceases to satisfy eligibility requirements - events that cause an employee's dependents to satisfy or cease to satisfy eligibility requirements for coverage on account of attainment of age, student status, or any similar circumstances.
5. Residence - a change in the place of residence of the employee, spouse or dependent.

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The following events also apply to health and term life insurance as well as to the dependent care and medical flexible spending account. The events in 6-10 below do not need to meet the consistency requirements.

6. HIPAA Special Enrollment Rights – a change may be made if an employee has a right to enroll in an employer’s group health plan; or to add coverage for a family member under HIPAA, the employee can make a conforming election under the Cafeteria Plan.
7. Judgement, Decree or Order – a change may be made as a result of a judgement, decree or order resulting from a divorce, annulment or legal separation, including a qualified medical child support order (QMCSO).
8. Entitlement to Medicare or Medicaid – a change may be made as a result of Medicaid and Medicare entitlement.
9. COBRA – a change may be made if a COBRA event (or similar state law continuation coverage event) occurs with respect to the employee, the employee’s spouse or a dependent.
10. A leave of absence under the Family Medical Leave Act.

The following events relating to a change in cost or change in coverage allow a change in plan election for all benefits under the Cafeteria Plan, with the exception of the health flexible spending account.

Changes in Cost

The Plan allows for an automatic election change that corresponds to an increase or decrease in the cost of the coverage. Moreover, if there is a significant cost increase, a Plan may allow participants either to make a corresponding election increase or elect alternative coverage.

Change in Coverage

1. Significant Curtailment – if the coverage under a Plan is significantly curtailed or ceases during a period of coverage, the Cafeteria Plan may permit affected employees to revoke their elections under the Plan and make a new election for coverage under another benefit package option providing similar coverage. Coverage under a Plan is significantly curtailed only if there is an overall reduction in coverage provided to participants under the Plan so as to constitute reduced coverage to participants.
2. Addition to or elimination of benefit package – if during a period of coverage a Plan adds a new benefit package option or other coverage option (or eliminates an existing benefit package option or other coverage option), the Cafeteria Plan may permit affected employees to elect the newly added option (or elect another option if an option has been eliminated) prospectively on a pre-tax

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basis and make corresponding election changes with respect to other benefit package options providing similar coverage.

3. Change in coverage of spouse or dependent under other employer's plan – a Cafeteria Plan may permit an employee to make a prospective election change that is on account of and corresponds with a change made under the plan of the spouse's, former spouse's or dependent's employer if (1) a Cafeteria Plan or qualified benefits plan of the spouse's, former spouse's, or dependent's employer permits participants to make an election change that would be permitted under the proposed and final regulations; or (2) the Cafeteria Plan permits participants to make an election for a period of coverage that is different from the period of coverage under the Cafeteria Plan or qualified benefits plan of the spouse's, former spouse's, or dependent's employer.

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