

LEGAL UPDATES

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Two New Issues Impact Employer Cafeteria Plans

Two recent developments may require employers to amend their cafeteria plan documents, and revise the summary plan descriptions and other participant communications.

On February 10, 2011, the IRS announced that breast pumps and breast-feeding supplies are considered "medical care." As a result, expenses for breast pumps and breast-feeding supplies now are eligible for reimbursement under health flexible spending accounts, health reimbursement arrangements, health savings accounts, and Archer medical savings accounts. This announcement reverses the agency's long-standing position that the costs of breast pumps are not reimbursable medical care expenses, and that a change to that position would require a change in the tax law by Congress. An amendment may be required to a health FSA if an employer wants to allow reimbursements under the plan for such expenses.

Additionally, the new healthcare reform laws enacted last year prohibit reimbursement from health flexible spending accounts for over-the-counter drug expenses (other than insulin) incurred on or after January 1, 2011 without a prescription. Any plan amendment required to implement this prohibition must be adopted by June 30, 2011. For more information about this prohibition, see our previous alert, [IRS Guidance on Reimbursement of Over-The-Counter Drugs from Employer Plans](#).

What This Means to You

If your company offers a health flexible spending account plan to employees, the plan documents should be reviewed to determine whether an amendment would be needed either to prohibit the reimbursement of over the counter drugs, or, if desired, to allow reimbursement for breast pumps and related supplies. Any amendment to prohibit the reimbursement of OTC drugs must

be adopted by June 30, 2011. Also, the summary plan description and other participant communications should be reviewed and updated as necessary in light of these two developments.

Contact Info

Please contact a member of the Employee Benefits and Executive Compensation practice group if you have questions or if we can assist in any way.

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