



*Employee Benefits Compliance:
Mid-Year Election Changes
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Today's Speaker



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General Rules

Can the Employee Change Their Elections?

- **IRC 125 governs** when benefits can be paid for using **pre-tax dollars**
- Pre-tax elections generally must be made **prospectively**, and they are **irrevocable** unless allowed under **election change rules**
- Section 125 rules govern **whether pre-tax contribution can change**. Separate from whether carrier will allow mid-year change.
- Sources of **election change rules**:
 - IRC 125, regulations and IRS guidance
 - Must be allowed by employer to apply– look to written 125 plan document
 - HIPAA
 - Medical/dental/vision only





Section 125 Election Changes

What does the plan document say?

With the exception of HIPAA special enrollment rights, midyear election changes are permitted **only if** they are included in the written 125 plan document.

What plan election is being changed?

Reason allowable depends on type of benefit.



Reason for Change	Medical, Dental, Vision	Health FSA	DCAP
HIPAA special enrollment	✓		
Change in Status	✓	✓	✓
FMLA	✓	✓	✓
Cost changes	✓		✓
Coverage curtailment	✓		
Significant improvement in coverage	✓		
Change under another employer plan	✓		
Loss of governmental coverage	✓		
Exchange enrollment	✓		
Medicare/Medicaid entitlement	✓	✓	
COBRA qualifying events	✓	✓	
Judgments, decrees, orders	✓	✓	
Change in provider or hours			✓



Medical, Dental & Vision Plans

Permitted Election Changes

- HIPAA special enrollment
- Change in status events
- Cost changes
- Coverage curtailment
- FMLA
- Significant improvement of coverage
- Change under another employer's plan
- Loss of governmental coverage
- Exchange enrollment
- Medicare/Medicaid entitlement
- COBRA qualifying events
- Judgments/decrees/orders



HIPAA Special Enrollment or Change in Status?

HIPAA Special Enrollment

- Medical, dental and vision plan must allow person to be added and corresponding change to pre-tax election
- 3 reason categories:
 - **Life events**– marriage, birth, adoption, placement for adoption
 - Loss or gain of eligibility for **CHIP or Medicaid** coverage
 - **Loss of eligibility** for other employer coverage (next slide)
- Time limit:
 - Within 30 days for loss of other employer coverage or life events
 - Within 60 days of loss of coverage or determination of eligibility for CHIP or Medicaid
- Prospective change
 - Exception for new child (birth, adoption, placement for adoption)



HIPAA Special Enrollment

“Loss of Eligibility for Other Employer Coverage” Includes...

- Divorce or legal separation results in employee losing coverage under spouse's health insurance
- Dependent is no longer considered a "covered" dependent under a parent's plan
- Spouse's death leaves employee without coverage under plan
- Spouse's employment ends, as does coverage under their employer's health plan
- Employer reduces employee's work hours causing employee to lose eligibility for health plan
- Plan decides it will no longer offer coverage to a certain group of individuals (for example, those who work part time)
- Employee longer lives or works in HMO's service area

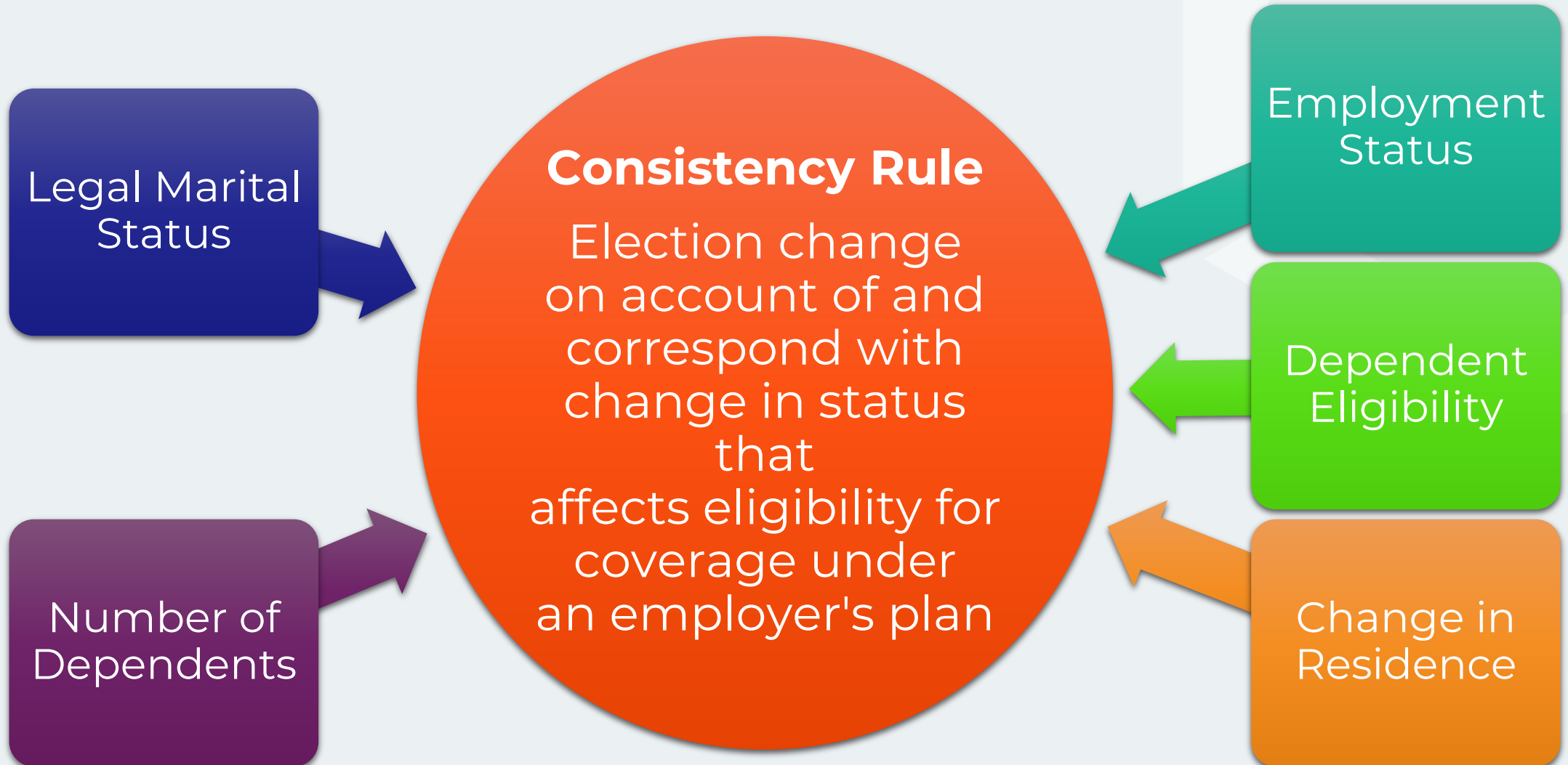


§ 125 Change in Status Events

- **Legal marital status**
 - Marriage, death of spouse, divorce, legal separation, annulment
- **Number of dependents**
 - Birth, death, adoption, placement for adoption
- **Employment status (employee, spouse, or dependent)**
 - Termination or commencement of employment, strike, lockout, commencement or return from unpaid LOA, change in worksite, any change in employment status that affects eligibility under the plan
- **Dependent satisfies or ceases to satisfy eligibility requirements**
 - Due to age, student status, etc.
- **Residence (employee, spouse, or dependent)**



Change in Status Events



Other Permitted Reasons for Election Changes

§ 125 Cost Changes

- **Automatic** if the cost of a qualified benefit plan increases or decreases during the period of coverage.
- **Significant cost changes**
 - Employee can make corresponding change, including switching to lower cost coverage or dropping coverage.
 - “Significant” is not defined, but IRS regulations examples use 12.5% as example of significant. IRS says 12.5% isn’t necessarily the standard.



§ 125 Coverage Changes

- **Significant curtailment...**
 - **with loss of coverage**, e.g., elimination of benefits package option, HMO ceasing to be available where person resides, substantial decrease in medical care providers under the plan, reduction in benefits for a specific type of medical condition or treatment.
 - **without loss of coverage**, e.g., significant increase in deductible, copay or OOP cost sharing limit. (Usually, loss of one physician in network not enough.)
- **Significant coverage improvement**
 - addition or improvement of a benefit package option



Exchange Enrollment

- **Reduction in hours of service without loss of coverage** for employee whose hours are reduced to below 30 hours/week but do have not yet lost coverage because they're in a stability period
- **Enrollment in Exchange QHP** for employee who qualifies for either a special or annual enrollment period in the Exchange. Employee can revoke election under the group health plan to enroll in the Exchange plan, so long as the election change corresponds to the intended enrollment of the employee (and related individuals) in individual coverage.
- **Revocation of other-than self coverage** to allow family member to enroll in QHP through the Exchange



§ 125– Permitted Reasons

- **FMLA**
 - Employee taking FMLA leave may revoke an existing election or cease payment for time that they are on leave
- **Change under another employer's plan**
 - Change must be on account of and correspond with change in other employer plan
- **Loss of governmental or educational coverage**
 - E.g. state risk pool, Tribal government plan, college health plan, SCHIP



§ 125– Permitted Reasons

- **Medicare/Medicaid entitlement**
 - Drop coverage if participant enrolls
 - Enroll midyear if participant loses coverage
- **COBRA qualifying events**
- **Judgments/decrees/orders**
 - Resulting from divorce, legal separation, annulment or change in legal custody



FSAs, HSAs, and Group Term Life

Health FSA

- **Permitted** for change in status events, FMLA, Medicare/Medicaid entitlement), COBRA qualifying events, judgments, decrees and orders
- **Not permitted for:** cost changes, coverage curtailment, significant improvements in coverage



DCAP or Dependent Care FSA

- **Permitted** for change in status events, FMLA, cost changes (with non-family provider), or change in provider or hours
- **Consistency Rule:** Election change permitted if it is **on account of** and **corresponds with a change in status** that effects:
 - **eligibility** for coverage for qualified benefits under an employer's plan, or
 - **expenses** described in section 129 (including employment-related expenses as defined in section 21(b)(2)) with respect to dependent care assistance



Other Account-Based Plans

- **HSA**

- Changes may be made prospectively on a monthly basis

- **Adoption Assistance**

- Midyear election change allowed for the commencement or termination of an adoption proceeding
 - Consistency rule is satisfied if the election change is on account of and corresponds with a change in status that affects:
 - Eligibility for coverage under employer's plan, or
 - Qualified adoption expenses described in § 137



Group Term Life– Consistency Rule

- Election change permitted only if it is on account of and corresponds with a **change in status** that affects eligibility for coverage for qualified benefits under an employer's plan.
 - Includes a change in status that results in an increase or decrease in the number of an employee's family members or dependents who may benefit from coverage under the plan
 - Election to increase or decrease coverage in response to a change in status event is deemed to correspond with change in status



Pulling it Together: Examples

Example 1– New Child and Family Coverage

Facts: Sterling Cooper advertising agency provides health coverage for its employees under a plan through which employees may elect either employee-only or family coverage. Sterling Cooper also maintains a calendar year cafeteria plan under which qualified benefits, including health coverage, are funded through salary reduction.

Sterling Cooper employee, Don, is married to Betty and they have a child, Sally. In accordance with Sterling Cooper's cafeteria plan, Employee Don elects employee-only health coverage before the beginning of the calendar year.

During the year, Don and Betty adopt a child, Donny. Within 30 days thereafter, Don wants to revoke his election for employee-only health coverage and obtain family health coverage for Betty, Sally, and Donny as of the date of D's adoption.

Question: Can Don do that?



Example 1– New Child and Family Coverage

Answer: Yes.

Sterling Cooper’s cafeteria plan may permit Don to change his salary reduction election to family coverage under HIPAA special enrollment rights. The increased salary reduction is permitted to reflect the cost of family coverage from the date of adoption.

Don’s adoption of Donny is also a change in status, and the election of family coverage is consistent with that change in status. So, Sterling Cooper’s cafeteria plan could permit Don to elect family coverage prospectively in order to cover Betty, Sally, and Donny for the remaining portion of the plan year.



Example 2– Transfer Out of HMO Service Area

Facts: Lumon Industries maintains a calendar year cafeteria plan under which full-time employees may elect coverage under one of three group health plans: a PPO or either of two HMO options with different service areas. Lumon also offers a health FSA.

Mark S, who works in the service area of HMO #1, elects the HMO #1 option. During the year, Mark is transferred to another work location which is outside the HMO #1 service area and inside the HMO #2 service area.

Questions: Can Mark make an election change? What change(s) can he make?



Example 2– Transfer Out of HMO Service Area

Answer: Mark can change his group health plan election. The transfer is a change in status (change in worksite), and under the consistency rules, the plan can allow Mark to make an election change either to elect the PPO or HMO#2 or cancel group health coverage altogether.

Mark cannot, however, change his FSA election. The change in worksite has no effect on Mark's eligibility under the Lumon FSA, so no change in Mark's FSA is authorized.



Example 3– Mid-Year Premium Reduction

Facts: Jeanine is a teacher at Abbott Elementary School. Abbott maintains a calendar year cafeteria plan pursuant to a collective bargaining agreement for the benefit of Abbott employees. The cafeteria plan offers various benefits, a group health PPO plan and a health FSA. As a result of mid-year negotiations, premiums for the PPO plan are reduced in the middle of the year, insurance co-payments for office visits are reduced by an amount which constitutes a significant benefit improvement, and an HMO option is added.

Question: What changes, if any, can Jeanine make to her elections, mid-year?



Example 3– Mid-Year Premium Reduction

Answer: The reduction in health insurance premiums is a reduction in cost. Accordingly, the cafeteria plan can automatically decrease the amount of salary reduction contributions of Jeanine and the other affected participants by an amount that corresponds to the premium change.

Also, the decrease in co-payments is a significant benefit improvement and the addition of the HMO option is an addition of a benefit package option. Therefore, the plan can permit Jeanine to make an election change to elect the indemnity plan or the new HMO option.

Finally, the plan may not permit Jeanine to change her health FSA election to reflect the mid-year change in copayments under the PPO.



Example 4– DCAP

Facts: Jake is married to Amy and they have one child. Their employer, the NYPD, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Jake and Amy's baby is cared for by Doug Judy, Jake and Amy's household employee, who is not a relative theirs and who provides child care services at an annual cost of \$4,000.

Prior to the beginning of the year, Jake elects salary reduction contributions of \$4,000 during the year to fund coverage under the dependent care FSA for up to \$4,000 of reimbursements for the year. During the year, Jake raises Z's salary. Jake now wants to change his dependent care FSA election for this year to an annual amount of \$4,500 to reflect the raise.



Question: Can Jake do this, or is he flouting the rules once again?

Example 4– DCAP

Answer: Jake can do that. Doug Judy's salary increase is a significant increase in cost, and an increase in election to reflect the raise corresponds with that change in status. Thus, the NYPD's cafeteria plan may permit Jake to elect to increase his election under the dependent care FSA.



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Questions





Thank you!