HR insider bulletin

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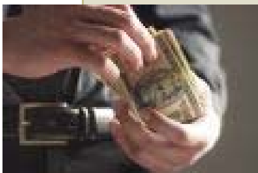
Travers, O'keefe
11 Hanover Square
New York, NY 10005
Tel: 212.742.7900
Fax: 212.742. 9416

Use-It-or-Lose-It Rule

'Grace Period' Allows More Time to Spend Year-End FSA Balances

EFFECTIVE May 18, 2005, employers may now permit employees to carry forward any remaining balances in their flexible spending accounts for a maximum of two and one-half months after the close of a plan year and receive reimbursement for qualified expenses incurred during those months, according to IRS Notice 2005-42. The extension **must** apply to all participants in the cafeteria plan. For calendar-year plans, the grace period may not extend beyond March 15.



Previously, any unused amounts remaining in a participant's FSA at year-end were forfeited. John Snow, Treasury Secretary, said the change in policy "will ease the spending rush" prompted by the use-it-or-lose-it rule.

Even though permitting a carry-forward option in a cafeteria plan may make sense, it should be weighed against potentially increased administrative costs, according to The Segal Company.

For example, employers will need to:

- Consider adjusting the claims run-out period to reflect the new grace period. *(Continued on page 2)*

Keeping Everyone in Sync

Handbooks 'Mirror' Company Practices

EVEN THOUGH employers aren't required to have employee handbooks, they can be a highly effective tool for communicating company policies to employees and for helping management consistently enforce those policies.

However, there's no such thing as a "one size fits all" handbook, according to Miller & Martin LLP. Whether in electronic or print format, handbooks need to accurately reflect employers' policies and procedures, address specific issues important to the company, and comply with current state and federal law.

It's a good idea to review your handbook periodically to make sure it includes and addresses the following items:

(1) *At-will statement*—Reiterates that employment is at-will (except in Montana), that the handbook is not a contract, and that the employer reserves the right to change any policies *(Continued on page 2)*

Fighting Drugs in the Workplace

Supreme Court Deals Blow to Medical Marijuana

On June 6, 2005, the U.S. Supreme Court upheld the right of the federal government to prosecute crimes involving marijuana, including those relating to medical marijuana, apparently overriding state laws to the contrary. Essentially, the Supreme Court gave the Drug Enforcement Agency the green light to arrest any and all medical marijuana users, growers, or suppliers, according to Fisher & Phillips LLP, and may signal the beginning of a more conservative chapter in the interpretation of drug and alcohol policies.

Currently 10 states permit the medical use of marijuana: Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont, and Washington. Fisher & Phillips notes that employers in these states can now feel more certain that they do not have to hire or continue to employ people who test positive for medical marijuana.

In the meantime, employers who amended their drug and alcohol policies to accommodate employees' legal use of medical marijuana under state law may want to consult their legal counsel about the risks of maintaining that policy given this new ruling. ■

Use-It-or-Lose-It . . .

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- Provide additional communications that will be necessary to minimize employee confusion over attributing claims to the right plan year.
- Establish administrative processes for correctly paying claims incurred in the grace period from the proper plan year account. For example, qualified expenses incurred during the grace period could be paid with unused benefits or contributions from the previous plan year. Hewitt notes that this may be particularly challenging for FSAs that utilize a debit-card payment option. Any unused balances remaining at the end of the grace period must be forfeited under the use-it-or-lose-it rule.
- Consider how a grace period may affect employee forfeitures, particularly if forfeitures are used to pay FSA administrative expenses.
- Amend cafeteria plan documents to provide for the grace period. To make it available for 2005, employers must amend their plan documents by the end of the current 2005 plan year.

Segal notes that plan sponsors should be wary of extending a grace period for Dependent Care Spending Accounts because of the statutory contribution limit and the interaction with the dependent care tax credit. The Treasury Department is expected to resolve potential compliance issues related to COBRA continuation coverage and HIPAA portability rules. ■

Handbooks Mirror . . .

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in the handbook at its discretion;
(2) *Pay policies*—Tell employees how and when they will be paid and explain the procedures that impact pay;
(3) *Equal opportunity/harassment policies*—An ideal way to document that you have notified your employees about these issues;
(4) *Paid leave*—Even though many employers aren't required to offer vacation, sick, or bereavement leave, those who do should explain how those policies will be administered;
(5) *Unpaid leave*—Employers with 50 or more employees within a 75-mile radius must include their FMLA policy; other unpaid leave policies should also be included;
(6) *Workplace privacy issues*—Explaining such issues as monitoring of e-mail, internet use, or workplace searches tells employees how much privacy to expect;
(7) *Employee conduct*—Explain what is expected or prohibited and the resulting discipline;
(8) *Confidentiality rules and security procedures*—Inform employees to keep trade secrets and other proprietary information confidential;
(9) *Identifying key contacts*—Lets employees know the correct "go to" people for information; and
(10) *Tear-out acknowledgement form*—Provides legal documentation that employees have received a handbook. ■

. . . . Bulletin Briefs . . . .

♦ *Plan Sponsors Move to Embrace Offering Advice*

After years of teeth-gnashing and soul-searching, it appears that over 50% of plan sponsors will decide this year that the risk of making investment advice available to participants in defined contribution plans is less worrisome than not doing so, according to PLANSPONSOR's annual *Defined Contribution Survey*.

♦ *Bankruptcy Act Protects Retirement Plans*

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 adds specific protections for retirement plans. The new law exempts from the bankruptcy estate assets held by a qualified plan, 403(b) plan, 457 plan, or IRA (traditional, Roth, SEP, and SIMPLE). The effect of the exemption is to place retirement plan assets beyond the reach of creditors during or after the bankruptcy proceeding. The Act goes into effect for bankruptcy petitions filed after October 16, 2005. ■

The HR*insider*SM *bulletin* is brought to you each month courtesy of **Travers, O'keefe** a UBA member. For more information, contact us at **generalmailbox@travers-okeefe.com**