

## Gavel to Gavel: It's that simple

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By **Mary Steichen**

With all the changes that have resulted from the recent health care reform legislation, one change could help make things easier for small employers - the "simple" cafeteria plan. Employers establish cafeteria plans generally to ensure that certain benefits can be paid for on a tax-free basis. Some of the benefits that qualify for inclusion under a cafeteria plan include group term life insurance, benefits under a self-insured medical expense reimbursement plan, and a dependent care assistance plan. The Internal Revenue Service requires that benefits provided under a cafeteria plan do not discriminate in favor of highly compensated employees, which can create an administrative headache for employers, particularly small employers.



Health care reform legislation encourages small employers to provide benefits under a cafeteria plan by providing a means to simplify the cumbersome process of benefits administration. The benefit of establishing a simple cafeteria plan to a small employer is that the employer is provided with a safe harbor from the nondiscrimination requirements for cafeteria plans as a whole, as well as from the nondiscrimination requirements for the specified individual qualified benefits offered under a cafeteria plan. While the Internal Revenue Service has not been vigilant regarding nondiscrimination testing for health and welfare benefits in the past, it has recently emphasized that the nondiscrimination testing requirements must be met in the future.

To be eligible under a simple cafeteria plan, the employer must meet certain requirements, including size limitations, minimum participation and contribution levels. To be considered a small employer, an employer would need an average 100 or fewer employees on business days during either of the two preceding years. Once eligibility is established, an employer can utilize the simple cafeteria plan until the employer averages 200 or more employees on business days over a two- year period. All employees who have at least 1,000 hours of service for the preceding plan year must be eligible to participate, and each employee eligible to participate must be allowed to elect any benefit available under the

plan. Certain employees may be excluded from participation, including those employees who have not attained the age of 21, have less than one year of service, are covered under a collective bargaining agreement, or are nonresident aliens.

Regarding contribution requirements under the simple cafeteria plan rules, the employer must make a non-elective contribution on behalf of each qualified employee in an amount equal to either a uniform percentage of the employee's compensation (but not less than 2 percent) or a matching amount that is not less than the lesser of 6 percent of the employee's compensation for the plan year or twice the amount of the salary reduction contributions of each qualified employee.

If a small employer already meets the requirements for a simple cafeteria plan, it would certainly benefit the employer to switch to this new type of plan to be able to avoid having to meet yet another nondiscrimination testing requirement provided for by the Internal Revenue Service.

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