

To our clients and friends:

MINTZ LEVIN

When You Need More...

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION
ADVISORY

AUGUST 21, 2007

Boston

Washington

New York

Stamford

Los Angeles

Palo Alto

San Diego

London

www.mintz.com

One Financial Center
Boston, Massachusetts 02111
617 542 6000
617 542 2241 fax

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax

666 Third Avenue
New York, New York 10017
212 935 3000
212 983 3115 fax

707 Summer Street
Stamford, Connecticut 06901
203 658 1700

Complying with the Massachusetts Cafeteria Plan Requirement

Beginning July 1, 2007, companies with 11 or more employees working at Massachusetts locations are generally required to maintain a “section 125 cafeteria plan” enabling employees to pay for health care coverage (whether obtained through an employer-sponsored group health plan or elsewhere) on a pre-tax basis. ([Click here](#) for a previous client alert explaining the particulars of the section 125 cafeteria plan requirement.) While the vast majority of employers already maintain cafeteria plans for their employees who are eligible for employer-provided coverage, the Massachusetts section 125 cafeteria plan requirement applies as well to employees who were not previously eligible for employer-provided coverage (e.g., part-time employees, employees in an ineligible class, or employees of employers who don’t offer group health plan coverage). This means that employers will have to amend the eligibility criteria under their existing cafeteria plan or establish a separate cafeteria plan for individuals who are not eligible for the employer health plan. While both approaches work equally well, we have found it easier to adopt a separate cafeteria plan specifically for employees who are not eligible for the employer’s health plan. This advisory outlines the steps required to adopt a separate cafeteria plan that complies with the Massachusetts section 125 cafeteria plan requirement.

Step One: Download the “Adoption Agreement” at the Commonwealth Connector’s website, found under “Must Have” Documents: ([click here](#))

Step Two: Complete the Adoption Agreement as follows:

1. *Basic Plan Information.*
 - A. Insert name of company.
 - B. Insert name of company in place of “[name of adopting Employer Sponsor listed in Section I.A above].”
 - C. Insert the effective date of the plan. This should be the same as in D below and will

203 658 1701 fax

1620 26th Street
Santa Monica, California 90404
310 586 3200
310 586 3202 fax

1400 Page Mill Road
Palo Alto, California 94304
650 251 7700
650 251 7739 fax

9255 Towne Centre Drive
San Diego, California 92121
858 320 3000
858 320 3001 fax

The Rectory
9 Ironmonger Lane
London EC2V 8EY England
+44 (0) 20 7726 4000
+44 (0) 20 7726 0055 fax

generally be July 1, 2007 if the company had 11 or more full time employees between 4/1/06 and 3/31/07. If a company has fewer than 11 employees during this period, the effective date would be the October 1st after the employer has 11 or more employees (tested from 10/1 through 9/30).

- D. This should be the same date as in C above. The requirement was first effective July 1, 2007.
 - E. Check the applicable plan year. You can use whatever 12 month period you want, but it makes sense to use the same 12 month period that your other health benefits and cafeteria plan are on so you only have one open enrollment period.
 - F. Insert the company's federal EIN.
 - G. Insert the company's state EIN (this is the Division of Unemployment Assistance number).
2. *Participating Employers.* If the company will be the only employer with employees participating in this plan, select the "default election." If any companies related to the company completing the form will participate in this cafeteria plan, select the "optional election" and list the participating employers and their EINs on Schedule D.
 3. *Participant Eligibility.* Because this is an additional cafeteria plan, do not select the "default election," which would include all employees of the employer. Instead, select the "optional election" and select the group of employees you want to exclude from participation. You should select at least the first excludible group (employees who are eligible for any other 125 plan). If you want to exclude union employees, you can identify them as an excluded group on Schedule A.
 4. *Employer Contributions.* If the company will not contribute to the employee's health insurance premiums, select the "default election." If the company will contribute, select the "optional election" and complete Schedule B, which specifies the formula for the employer contribution.

5. *Medical Care Coverage Options.* If the only coverage an employee can elect is coverage available through the Connector, select the “default election.” If an employee can elect coverage in addition to those offered by the Connector, select the “optional election” and list the other health insurance options on Schedule C.
6. *Employer’s signature.* Sign the form.
7. *Schedule A.* Identify the eligibility requirements. You can have a waiting period of up to sixty days. For example: “Any Employee who completes sixty days of employment with the Employer.”
8. *Schedule B.* See 4 above.
9. *Schedule C.* See 5 above.
10. *Schedule D.* See 2 above.

Step Three: Download the “Section 125 Plan Document” at the Commonwealth Connector’s website, found under “Must Have” Documents: ([click here](#))

Step Four: Complete the Section 125 Plan as follows:

1. On the cover page, delete the “amended and restated” language in brackets.
2. In Section 1.1, delete the “amends, restates and continues” language in brackets and delete the brackets around adopts.

Step Five: Download the description—click the word “Describes” under Employee notice at the Commonwealth Connector’s website: ([click here](#))

Step Six: Complete the Description as follows:

1. On the first page, replace “[Template For] ABC Company” with the name of your company.
2. On the first page, insert the effective date of the plan and delete the brackets and the “Amended and Restated/” language.
3. In the Introduction paragraph, delete the brackets and the “/Amended and Restated” language.
4. In the “Eligibility” section, insert name of company where instructed and delete the brackets.
5. In the second paragraph of the Electing to Participate in the Plan section where the brackets are, insert when the participation will

be effective. For example, “as soon as possible after you make an election.”

6. In the Questions section on the last page, identify the individual to whom questions should be addressed.

Step Seven: Download the election form -- click on “Opt-in/Opt-out Forms” at the Commonwealth Connector’s website: ([click here](#))

Step Eight: Complete the Opt-in/Opt-out Form as follows:

1. On the first page, replace “ABC Company (ENTER COMPANY NAME)” with the name of your company.

Step Nine: Download the election change form at the Commonwealth Connector’s website, found under “Allow Changes”: ([click here](#))

Step Ten: Complete the Election Change Form as follows:

1. On the first page, replace “ABC Company (ENTER COMPANY NAME)” with the name of your company.

Step Eleven: You will be required to file your cafeteria plan documents (both the plan you are creating now and your existing cafeteria plan) with the Commonwealth Connector on October 1, 2007. It is anticipated that this requirement will be eliminated, but for now, it still exists.

Step Twelve: Register with the Commonwealth Connector as follows:

1. Go to the Connector website: ([click here](#))
2. Click on “employers” (this is the green box).
3. Click on “begin enrollment in the voluntary plan” in the “Get started now” box.
4. Click on the "enroll online" box.
5. Complete the Company information section and click “submit.” You will need basic company information, such as the company name, address, email and number of employees. (You may have to disable pop up blockers to complete your registration.)
6. Complete the employee information. You can do this by either typing the information on-line or downloading the information. You will need each eligible employee’s name, birth date, zip code, last four digits of social security number and the date the employee becomes eligible.

(You will also have to update this information when an employee is terminated or when an individual is hired.)

7. Once you register, the Connector will email you your login information and your Employer ID number. You will need this information to access your account when you update your information. Your employees will need the employer ID when they enroll in insurance through the Connector.
8. If you provide email addresses for the eligible employees, the Connector will email information to the employees on how to enroll in an insurance plan through the Connector. If you do not include email addresses, you can send the eligible employees the letter that the Connector will send you (simply insert the employer name and employer ID in the form).

Step Thirteen: Distribute the description and election form to employees who are eligible for the Massachusetts cafeteria plan. You can also include the letter that you will receive from the Connector explaining how to enroll in a health insurance plan through the Connector (see Step Twelve, #8).

Step Fourteen: When an employee signs up for insurance through the Connector, the Connector will send the bill to you. The employee must also sign up for your MA cafeteria plan. Then you will take the premiums out of the employees paycheck on a pre-tax basis and send the premiums to the Connector. If the employee's paycheck is not sufficient to cover the premium, the employee will be required to pay the difference.

* * * * *

If you have any questions concerning the information discussed in this advisory or any other employee benefits topic, please contact one of the attorneys listed below or your primary contact with the firm who can direct you to the right person. We would be delighted to work with you.

Alden Bianchi
617.348.3057 | AJBianchi@mintz.com

Tom Greene
617.348.1886 | TMGreene@mintz.com

Addy Press

617.348.1659 | ACPress@mintz.com

Pamela Fleming
617.348.1664 | PB Fleming@mintz.com

Copyright © 2007 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

The above has been sent as a service by the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. and may be considered an advertisement or solicitation. The content enclosed is not intended to provide legal advice or to create an attorney-client relationship. The distribution list is maintained at Mintz Levin's main office, located at One Financial Center, Boston, Massachusetts 02111. If you no longer wish to receive electronic mailings from the firm, please notify our marketing department by going to www.mintz.com/unsubscribe.cfm.