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Boards of Education Need to Establish “Premium Option Plans” and “Flexible Spending Accounts” for Employees

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Boards of education should meet with their health benefits brokers to create a Premium Option Plan and Flexible Spending Account as soon as administratively practical, in accordance with P.L. 2011, c.78.

P.L. 2011, c.78 amended N.J.S.A. 18A:16-19.1 to read as follows:

Notwithstanding the provisions of any other law to the contrary, a board of education, or an agency or instrumentality thereof, may establish as an employer a cafeteria plan for its employees pursuant to section 125 of the federal Internal Revenue Code, 26 U.S.C. s.125, and shall establish such a plan for medical or dental expenses not covered by a health benefits plan. The plan ~~may~~ shall provide for a reduction in an employee’s salary, through payroll deductions or otherwise, in exchange for payment by the employer of medical or dental expenses not covered by a health benefits plan, and may provide for a reduction in an employee’s salary, through payroll deductions or otherwise, in exchange for payment by the employer of dependent care expenses as provided in section 129 of the code, 26 U.S.C. s.129, and such other benefits as are consistent with section 125 which are included under the plan. The amount of any reduction in an employee’s salary for the purpose of contributing to the plan shall continue to be treated as regular compensation for all other purposes, including the calculation of pension contributions and the amount of any retirement allowance, but, to the extent permitted by the federal Internal Revenue Code, shall not be included in the computation of federal taxes withheld from the employee’s salary. (cont’d ➔)

Section 125 plans or cafeteria plans allow certain employer and employee pre-federal income tax payments towards employee benefits. The law sets forth two required Section 125 plan benefits: cafeteria plans in the form of a “Premium Option Plan” (POP) and a “Flexible Spending Account” (FSA). According to Local Finance Notice (LFN) 2011-20R, the plans should be created “as soon as administratively practical.”

Under a Premium Option Plan, a member’s health care premiums are deducted from the employee’s paycheck before federal income taxes are calculated. Under a Flexible Spending Account, pre-federal income tax money is deducted from an employee’s paycheck and becomes eligible for reimbursement for certain eligible health expenses.

In practice, the employee’s funds are segregated by the employer and a system is established so an employee may submit expenses for reimbursement or use a “benefit card.” Any funds in an employee’s account not used by the end of the plan year revert to the employer and contribute towards administrative costs and/or pre-funding of accounts.

The Board needs to pre-fund accounts with an amount to cover anticipated claims during the initial period of this program and at the beginning of each plan/budget year. This is to ensure the funds available to pay or reimburse employee claims for reimbursements will exceed their salary deductions. LFN 2011-34 advises the full amount of an employee’s annual deduction must be available for use at any time as of the first day of the plan/budget year

notwithstanding how much the employee has contributed as of the first day.

The State’s Tax\$ave program is not available to boards of education.

According to LFN 2011-20R, the law does not authorize boards or other governmental employers to charge employees for the Section 125 plans. Indeed, nothing in the law provides that boards may charge employees for Section 125 plans. However, the law does not prohibit boards from charging employees. Nonetheless, the Board should follow the guidance set forth in the LFN.

Further, LFN 2011-34 states P.L. 2011, c.78 anticipates the employer will bear the costs of providing the Section 125 plans. This is because the Department of Community Affairs, Local Government Services expects the unused employee balanced retained by employers at the end of the year and the employer payroll tax savings will offset the Section 125 plans’ administrative costs.

Please note, coverage under Section 125 plans for domestic partners and civil union partners are subject to federal taxation.

Boards of education should follow the guidance of LFN-2011-20R and contact their health benefits brokers to create a Premium Option Plan and Flexible Spending Account as soon as administratively practical.



The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.