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MEMORANDUM

TO: Employee Benefits Clients of Williams Parker

FROM: Carol L. Myers & Edward Kim

RE: 2013 – Relaxation of Flex Plan Use it or Lose it Rule

The IRS has recently relaxed the *use it or lose it* requirements that apply to health flexible spending account plans. Under the revised rule, an employer can choose between the following three options in designing the terms of its health flexible spending account program:

1. Retain *use it or lose it* – all funds not used by qualifying expenses incurred in the year are forfeited
2. Grace period – any funds remaining unused in the account at year end may be used by qualifying expenses that are incurred in the first 2 ½ months of the next year
   a. For a calendar year plan, this means funds can be used for expenses incurred by March 15th.
   b. The grace period is available for up to 100% of the unused funds in the account.
3. $500 carryover – up to $500 of the unused year end account balance can be used in the following year
   a. For a calendar year plan, the unused funds may be used at any time in the next calendar year.
   b. The amount that can be carried over to the next year is limited to $500.

To offer the grace period or the $500 carryover, the written plan document must include wording specifically describing the option's availability. The wording must be added to the written plan document by the end of the year that funds will carry over from. Participants must receive notice of the revision to the plan.

A plan cannot offer BOTH the grace period and the $500 carryover. So, the employer must choose which to offer.

If the plan says nothing, then the traditional use it or lose it rule applies and neither the grace period, nor the $500 carryover is available in the plan.

It is recommended (but not required) that changes from grace period to $500 carryover be implemented only at the beginning of or early in a plan year. Switching a plan from grace period to $500 carryover at the end of the year may conflict with medical treatment spending that employees have planned.

Conclusion

We will continue to monitor these developments. If you have any questions or concerns regarding compliance with the flex plan rules and how it relates to your plans, please contact Carol L. Myers, Esq. at (941) 893-4001 or Edward K. Kim, Esq. at (941) 536-2034.

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