



CARES Act Offers New Options for Cafeteria Plan Sponsors

Although most of the (many) gallons of ink spilled to describe the Coronavirus Aid, Relief and Economic Security (“CARES”) Act covers the government’s \$2 trillion relief package and the newly expanded access to retirement plan accounts, a frequently overlooked portion of the Act offers employers the ability to give their employees some immediate – and cost-free – financial assistance. The CARES Act opens the door for employees to use pre-tax dollars to purchase over-the-counter drugs and menstrual care products.

Employers that offer a cafeteria plan that includes a health flexible spending account (“FSA”), health savings account (“HSA”), or health reimbursement arrangement (“HRA”) may amend those arrangements to permit reimbursement for drugs purchased without a prescription. The Affordable Care Act had precluded the use of FSA, HSA, and HRA funds to reimburse the cost of over-the-counter drugs and medicines. The CARES Act essentially returns the cafeteria plan rules to those in effect prior to the passage of the ACA. The CARES Act also makes over-the-counter menstrual care products eligible medical expenses for purposes of these accounts.

These are permissive changes, but employers looking for a way to offer some good news to their employees may want to consider making them. If adopted, the new provisions are effective for expenses incurred on or after January 1, 2020. Plan amendments will likely be necessary to implement them, at least with respect to coverage of over-the-counter drugs, and appropriate notices should be sent to employees.

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