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THINKING AHEAD

EMPLOYER STRATEGIES FOR HEALTH SAVINGS ACCOUNTS – PITFALLS AND PRACTICAL ADVICE

SOUTHWEST BENEFITS ASSOCIATION
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HSA+

- ✓ AS OF JANUARY 2016, NEARLY 20.2 MILLION PEOPLE WERE ENROLLED IN HSA/HDHPS*
- ✓ ENCOURAGING EMPLOYEES TO JOIN AN HSA CAN BE A DIFFICULT BALANCE WHEN MANAGING HSA INTERACTION WITH DIFFERENT HEALTH PLANS
- ✓ HOW TO OFFER INNOVATIVE PRODUCTS WITHOUT DISADVANTAGING ENROLLEE OR SPOUSE

***SOURCE: AHIP, 2016 SURVEY OF HEALTH SAVINGS ACCOUNT – HIGH-DEDUCTIBLE HEALTH PLANS**

MARRIAGE + FSA + HSA

EMPLOYEE IS ENROLLED IN AN FSA THROUGH HIS EMPLOYER, BUT ON HIS WIFE'S MEDICAL PLAN.

SHE IS CHANGING JOBS AND WILL HAVE NEW COVERAGE UNDER A HDHP/HSA.

CAN THE EMPLOYEE DROP HIS FSA, JOIN HER PLAN AND BENEFIT FROM HER HSA?

MARRIAGE + FSA + HSA - ANSWER

- **SINCE THE WIFE IS BEING OFFERED NEW COVERAGE THROUGH A NEW JOB, THIS IS A CHANGE OF EMPLOYMENT STATUS**
- **HUSBAND IS ALLOWED TO CHANGE HIS FSA ELECTION – CEASING IT**
- **COULD USE THE FSA FOR ANY ELIGIBLE EXPENSES**
- **INCURRED BEFORE THE TERMINATION**
- **WIFE CAN JOIN THE HDHP/HSA**



FSA CARRYOVER + HSA

DAVID HAD AN FSA WITH A CARRYOVER IN 2018.

IN JANUARY 2019, HE HAS JOINED AN HDHP/HSA PLAN.

**DAVID HAS SPENT THE DOLLARS IN THE FSA, BUT HAS NOT
SUBMITTED ALL HIS RECEIPTS. THERE APPEARS TO BE \$500 STILL IN
HIS FSA ON DECEMBER 31.**

CAN DAVID OPEN HIS HSA IN 2019?



FSA CARRYOVER + HSA ANSWER

DAVID CANNOT OPEN HIS HSA ACCOUNT AT ALL IN 2019 BECAUSE HE STILL HAS DOLLARS IN HIS FSA.

DESPITE THE FACT THAT HE ACTUALLY HAS SPENT THE REMAINING \$500, HE HAS NOT SUBMITTED THE RECEIPTS AND THE PAYMENTS HAVE NOT BEEN PROCESSED.

THE MONEY IN DAVID'S FSA WILL PREVENT HIM FROM OPENING AN HSA IN 2019. HE WILL HAVE TO WAIT UNTIL 2020 TO OPEN THE ACCOUNT.



DOMESTIC PARTNER + HSA

DP IS NOT TREATED THE SAME AS A SPOUSE FOR PURPOSES OF AN HSA.

IF THE DP IS A **TAX DEPENDENT**, THE DP CAN USE THE HSA DOLLARS, BUT CAN'T CONTRIBUTE ANY DOLLARS TO THE HSA.

IF THE DP IS NOT A TAX DEPENDENT, THE DP CAN CONTRIBUTE TO HIS/HER OWN HSA, BUT LIKELY CAN'T PUT IN PRE-TAX DOLLARS (UNLESS THE HSA IS CONNECTED TO THE DP'S EMPLOYMENT)

DP CAN GET TAX CREDIT FOR DOLLARS PUT INTO HSA WHEN FILING TAX RETURN



HSA + HRA

SIMILAR TO FSA – HRA CAN ONLY BE COMPATIBLE WITH AN HSA WHEN IT IS:

- 1. LIMITED PURPOSE**
- 2. POST-DEDUCTIBLE**
- 3. RETIREE-ONLY**
- 4. SUSPENDED**



**THESE ZODIAC SIGNS
ARE THE MOST
COMPATIBLE WITH
YOU!**



HSA + COBRA

EMPLOYEE A HAS AN HDHP WITH AN HSA. IF THE EMPLOYEE LEAVES HIS CURRENT EMPLOYMENT, IS THE HSA SUBJECT TO COBRA?



HSA + COBRA ANSWER

NO – THE HSA IS NOT SUBJECT TO COBRA.

THE HSA IS THE EMPLOYEE'S PROPERTY, AND HE WILL STILL HAVE ACCESS TO HSA DOLLARS THAT HE HAS ALREADY PUT IN, EVEN WHEN HE MOVES TO A JOB WITH A NON-HDHP MEDICAL PLAN.



HDHP + HSA + MEDICARE

AN EMPLOYEE IS IN AN HDHP/HSA AND IS TURNING 65 IN SEPTEMBER. WHAT IS THE IMPACT ON HER HSA?



HDHP + MEDICARE ANSWER

IF THE EMPLOYEE IS MERELY ELIGIBLE FOR MEDICARE AND HAS NOT ENROLLED FOR IT, THEN S/HE MAY STILL CONTRIBUTE TO AN HSA.

MEDICARE **ENTITLEMENT** (ELIGIBILITY + ENROLLMENT) MEANS THAT THE INDIVIDUAL CAN NO LONGER CONTRIBUTE TO THE HSA, BUT CAN STILL USE DOLLARS PREVIOUSLY ACCUMULATED.

- ✓ NOTE THAT MEDICARE ENROLLMENT IS AUTOMATIC FOR SOME PEOPLE GETTING SSA BENEFITS



HSA + RETROACTIVE MEDICARE

**IRS LETTER CLARIFYING RETROACTIVE MEDICARE ELIGIBILITY IN
NOVEMBER 2016**

**IF AN INDIVIDUAL DELAYS APPLYING FOR MEDICARE AND THEN IS
LATER COVERED BY MEDICARE, MEDICARE WILL ACTUALLY BE
OFFERED RETROACTIVELY TO THE MONTH IN WHICH S/HE TURNS
65 OR SIX MONTHS (WHICHEVER IS LESS)**

**EMPLOYEE CANNOT CONTRIBUTE TO THE HSA DURING THOSE
RETROACTIVE MONTHS**



THAT'S TOO CONFUSING, GIVE ME AN EXAMPLE!

SALLY IS WORKING WHEN SHE TURNS 65 IN MARCH 2017. SHE IS ON HER EMPLOYER'S HDHP/HSA AND DELAYS APPLYING FOR MEDICARE

SHE FINALLY DECIDES TO RETIRE IN AUGUST 2018, AND APPLIES FOR MEDICARE THEN

SALLY WOULD HAVE RETROACTIVE MEDICARE COVERAGE FOR A PERIOD OF SIX MONTHS (SINCE SIX MONTHS IS LESS THAN 17 MONTHS)

✓ **SALLY'S RETROACTIVE COVERAGE WOULD RUN FROM FEBRUARY 2018 – JULY 2018**



HOW CAN AN EMPLOYER FIGURE THIS OUT?

THE ONUS IS ON THE EMPLOYEE...

IF SALLY CONTRIBUTED TO HER HSA BETWEEN FEBRUARY AND JULY, SHE WILL EITHER HAVE TO PAY THE 6% EXCISE TAX ON HER OVER-CONTRIBUTIONS, OR...

- She can withdraw the excess contributions by the Federal tax return filing deadlines for the contribution year
- Timely withdrawals are not subject to the 20% tax for non-medical distributions

THESE OVER-CONTRIBUTIONS ARE STILL GOING TO NEED TO BE TREATED AS TAXABLE INCOME



WHEN CAN AN EMPLOYER'S HSA CONTRIBUTIONS BE RETURNED?

- USUALLY, HSA CONTRIBUTIONS ARE NON-FORFEITABLE
 1. PUTTING DOLLARS INTO SOMEONE'S ACCOUNT WHO WAS INELIGIBLE? DOLLARS CAN BE RETRIEVED IN **CURRENT PLAN YEAR**
 2. CONTRIBUTING MORE THAN ANNUAL STATUTORY LIMIT? DOLLARS MAY BE RETURNED TO EMPLOYER **UPON EMPLOYER'S REQUEST**
 3. MISTAKE? YES, IF EVIDENCE IS CLEAR AS TO ADMINISTRATIVE OR PROCESS ERROR – EMPLOYER **NEEDS TO MAINTAIN DOCUMENTATION** THAT SUPPORTS THE FACT OF THE ERROR



IF MISTAKEN HSA CONTRIBUTIONS WERE NOT DISCOVERED IN THE CURRENT PLAN YEAR?

THE EMPLOYER CAN ISSUE A CORRECTED W-2 FOR THE EMPLOYEE;
EMPLOYEE WOULD FILE AN AMENDED TAX RETURN FOR THE
PREVIOUS YEAR

- Or the employee keeps the dollars in the HSA, pays the 6% excise tax, and uses those dollars as part of next year's contribution (No W-2 correction!)

NOTE THAT THE IRS ISN'T 100% CLEAR AS TO WHETHER THE HSA VENDOR HAS TO RETURN THE FUNDS – CHECK TO SEE WHETHER THERE IS **RECOUPMENT LANGUAGE** IN THE HSA CUSTODIAL AGREEMENTS



HSA + MEDICARE

- **MEDICARE ENROLLEES CAN STILL USE HSA FUNDS FOR QUALIFIED MEDICAL EXPENSES**
- **HSA MAY BE USED TO PAY FOR MEDICARE PREMIUMS, BUT **NOT** FOR MEDICARE SUPPLEMENTS**
 - Non-HSA-eligible individuals may use dollars already placed in an HSA
 - Spouse of non-HSA-eligible individual could consider opening up an HSA



HSA + TRICARE, VA COVERAGE

TRICARE COVERAGE – MAKES INDIVIDUAL INELIGIBLE FOR HSA

VA COVERAGE – DEPENDS!

- Hospital care/medical services won't disqualify someone from putting money into an HSA as long as that person has **a disability rating from the VA**
- No disability rating + uses VA medical services = has to wait for three months before contributions to an HSA may resume



HDHP + MEDICARE + FSA

**EMPLOYEE IS ON MEDICARE; THE SPOUSE IS YOUNGER AND IS NOT.
EMPLOYEE WANTS TO ENROLL IN HDHP AND ENROLL IN AN FSA.
CAN SPOUSE (ON EMPLOYEE'S HDHP AS WELL) HAVE AN HSA? CAN
EMPLOYEE HAVE AN FSA?**



HDHP + MEDICARE + FSA ANSWER

IF EMPLOYER OFFERS IT, EMPLOYEE MAY HAVE HDHP AND FSA. IF EMPLOYEE HAS A GENERAL PURPOSE FSA, THEN SPOUSE CANNOT HAVE AN HSA.

IF EMPLOYEE CHOOSES HDHP AND FSA, IT NEEDS TO BE A LIMITED PURPOSE FSA FOR THE SPOUSE TO BE ABLE TO CONTRIBUTE TO THE HSA.



WHEN IS AN HSA CREATED?

SUSAN SIGNS UP FOR HER EMPLOYER'S HSA. HER ACCOUNT IS OPEN ON JANUARY 2, 2019, BUT NO CONTRIBUTION IS MADE UNTIL HER FIRST PAYCHECK ON JANUARY 10, 2019.

WHEN IS THE HSA OPENED?



WHEN IS AN HSA CREATED - ANSWER

STATE LAW DETERMINES WHEN AN HSA IS ESTABLISHED. YOU HAVE TO KNOW WHAT YOUR STATE SAYS ABOUT THIS TO KNOW WHEN THE HSA IS CREATED.

WHY IS THIS IMPORTANT? BECAUSE ONLY QUALIFIED SERVICES OBTAINED AFTER THE HSA IS ESTABLISHED CAN BE REIMBURSED.



HSA CONTRIBUTIONS BASED ON AGE, YEARS OF SERVICE OR COMPENSATION

EMPLOYER WITH A CAFETERIA PLAN WANTS TO VARY HSA CONTRIBUTIONS TO ITS EMPLOYEES BASED ON THEIR YEARS OF SERVICE WITH THE COMPANY, GIVING MORE TO PEOPLE WHO HAVE BEEN WITH THE COMPANY LONGER.

IS THIS ALLOWED?



HSA CONTRIBUTIONS BASED ON AGE, YEARS OF SERVICE OR COMPENSATION - ANSWER

SEC. 125 PLANS ARE LIMITED TO EMPLOYER CONTRIBUTIONS THAT ARE “UNIFORM FOR ALL PARTICIPANTS AND FOR ALL DEPENDENTS OF EMPLOYEES WHO ARE PARTICIPANTS”.

- These contributions can't be modified by reason of a participant's age or years of service.
- Basing contributions on compensation could naturally lead to sec. 125 discrimination issues, because HCIs would receive more money.**

****CAN STILL DISCRIMINATE IN FAVOR OF LESS-HIGHLY COMPENSATED EMPLOYEES**



HSA + CONTRIBUTION CHANGES

HOW MANY TIMES IN A PLAN YEAR MAY AN HSA CONTRIBUTION BE ADJUSTED?



HSA + CONTRIBUTION CHANGES ANSWER

HSA CONTRIBUTIONS MADE THROUGH SALARY REDUCTION UNDER A CAFETERIA PLAN **MAY** BE MADE MONTHLY.

SINCE ELIGIBILITY AND CONTRIBUTIONS ARE DETERMINED MONTHLY, THESE CHANGES MAY BE MADE PROSPECTIVELY.

YES, EMPLOYERS MAY LIMIT THE NUMBER OF CHANGES MADE DURING A PLAN YEAR VIA THE PLAN DOCUMENT, BUT CANNOT LIMIT STATUS CHANGES



TELEMEDICINE + HSA

**AN EMPLOYEE PARTICIPATES IN THE EMPLOYER'S HDHP WITH HSA.
CAN THE EMPLOYER OFFER A TELEMEDICINE BENEFIT TO THAT
EMPLOYEE?**

**(NOTE THAT THE ANSWER HERE IS VERY SIMILAR TO ON-SITE CLINICS
PROVIDING FREE HEALTH SERVICES TO EMPLOYEES WITH AN HSA.)**



TELEMEDICINE + HSA ANSWER

IN ORDER TO OFFER TELEMEDICINE SERVICES TO HSA PARTICIPANTS,
ONE OF SEVERAL THINGS MUST HAPPEN:

1. TELEMEDICINE SERVICES MUST BE LIMITED TO PREVENTIVE HEALTH CARE BENEFITS. (NOT LIKELY)
2. TELEMEDICINE SERVICES MUST BE CONSIDERED “PERMITTED INSURANCE” AS DEFINED BY IRS (NOT LIKELY; NARROWLY CONSTRUED)
3. EMPLOYEE PAYS MARKET VALUE FOR SERVICES ~\$45

SOURCE: IRS NOTICE 2004-23

