

Dependent Care FSA:

Plan Amendment Can Add Grace Period to Use 2020 Funds for Services Through March 15, 2021

Based on existing IRS rules and notices of relief this year, related to the COVID-19 pandemic, there are ways to help employees avoid forfeiting funds in their Dependent Care Flexible Spending Accounts (Dependent Care FSAs).

In order to provide this to your employees, you will need to amend your Section 125 plan document.

IF YOU HAVE A CALENDAR YEAR DEPENDENT CARE FSA—

You can amend your Section 125 plan to add up to a 2 ½ month grace period. This would allow employees to use their 2020 funds for eligible dependent care expense incurred through March 15, 2021.

Plans that do not have the grace period can amend their plan prior to the end of the plan year to add it in for that plan year. For example, if you have a plan year of 1/1/2020 to 12/31/2020, you could amend your plan up to 12/31/2020 to add in the grace period.

IF YOU HAVE A NON-CALENDAR YEAR DEPENDENT CARE FSA—

As part of the pandemic relief issued by the IRS, if you have not yet done so, you could amend your plan to allow employees to apply unused Dependent Care FSA funds remaining at the end of the plan year (or grace period, if your plan has one) ending in 2020 to pay or reimburse expenses incurred through December 31, 2020. Your Section 125 plan amendment for this would need to be adopted no later than December 31, 2021, and you would need to notify employees.

More information is available in our Legal Alert issued earlier this year, which also explained relief for mid-year election changes for cafeteria plans and FSAs: <https://aleragroup.com/news/irs-relaxes-election-change-other-rules-for-cafeteria-plans-and-fsas-051320/>