

Does the Commencement of a Domestic Partner Relationship Allow an Election Change Under the Cafeteria Plan Change in Status Rules?

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QUESTION: One of our employees has entered into a registered domestic partnership. He would like to drop major medical coverage under our calendar-year cafeteria plan when he becomes covered under the plan of his partner's employer later this year. (His partner's plan has a July 1-June 30 plan year.) Do the cafeteria plan change in status rules allow this?

ANSWER: The commencement of a domestic partner relationship will not permit a cafeteria plan election change under the “change in marital status” event. The change in status rules allow an election change on account of a change in legal marital status, including marriage, death of a spouse, divorce, legal separation, and annulment. It's true that the list of events in this category is not exhaustive (i.e., the regulation uses the term “including”), and the beginning or ending of a domestic partner relationship may seem analogous to the listed marital events—especially where the domestic partnership is certified or otherwise recognized by the state or municipality where the employee resides. But without further guidance from the IRS, your cafeteria plan should not allow participants to change an annual election based solely on the commencement of a domestic partner relationship.

However, another permitted election change event may allow your employee to change his cafeteria plan election to drop major medical coverage under these circumstances. If your plan allows election changes due to a “change in coverage under another employer plan,” your employee should be permitted to change his election upon showing that he has become covered under the plan of his partner's employer. For this election change event, there is no requirement that the other employer plan be maintained by the employer of a spouse or dependent. Note, however, that this event does not allow health FSA election changes.

For more information, see EBIA's Cafeteria Plans manual at Sections XIV.C.2.c (“Change in Legal Marital Status”) and XIV.H (“Change in Coverage Under Another Employer Plan”). See also EBIA's Employee Benefits for Domestic Partners at Section VI.J (“Special Issues for Cafeteria Plans”).

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