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HR & BENEFITS UPDATE

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Flextime as a Solution to Enhance Employee Satisfaction, But How Does It Affect Productivity?

HUMAN RESOURCES

The 9-5 workday has been around for 100 years or more. But 21st century lifestyles are putting pressure on employers to accommodate employees' personal schedules. Telecommuting, job-sharing and flextime are becoming increasingly popular offerings that help increase employee satisfaction. But how does anything get done? And how does such an unstructured job environment affect control.

Schedule Flexibility as an Employee Benefit

Sue's mother needs to visit the physical therapist three times a week from 9:00 – 10:00 a.m. Aoki has one more class to take to complete his bachelor's degree, but it meets on Tuesdays and Thursdays from 2:00 – 4:00 p.m. Jonathan is a single dad whose daughter arrives home from first grade at 3:30 p.m. The demands of today's lifestyles can affect the stress levels of your employees. Even if they're working, they may be thinking about family and other activities.

Offering a flexible work schedule, "flextime," allows these employees to work on their own schedules. The key is making them accountable to put in the allotted number of hours or, better yet, to achieve clearly stated objectives.

Employers and Society Benefit from Flextime

A happy worker is a productive worker, someone once said. But is that true? According to Ricardo Semler in his book The Seven-Day Weekend, since implementing a flextime schedule his company's annual revenue has soared from $35 million to $212 million over a six-year period.

Additionally, flextime may allow employers to save money on overhead. If two associates work opposite and complementary schedules on one job, also known as "job sharing," there is only one desk, one chair and one phone for two employees.

Some employees may choose to work early morning hours while others might prefer late evening hours. If this fits your business model, it may allow you to provide extended customer service across multiple time zones without officially having several shifts of workers.

Employers also know that attracting top-quality workers in a competitive market may necessitate expensive benefits packages. Flextime could be seen as a high-value benefit which costs the employer virtually nothing.

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And since some workers may choose to work four 10-hour days, there's one less car on the road that fifth day — which means a little less traffic congestion and a little less air pollution.

How to Implement Flextime

Implementing flextime in your organization starts with determining the feasibility. Obviously, if you are running an assembly line or your product or service requires that all team members be present at the same time, then flextime won't work for these jobs. For retail or manufacturing jobs, flextime might simply be impossible. But, if it does fit your business model and processes, then flextime needs to be codified. Create new guidelines and objectives by which to measure employee effectiveness.

Rather than measuring their effort by hours worked, quantify their goals based on organizational objectives. If you have a goal of selling 200 boxes, for example, what difference does it make if your salesperson hits the target in 20 hours or 40 hours? What difference does it make if she works from 6:00 a.m. – 2:00 p.m. instead of 9:00 a.m. – 5:00 p.m. and still exceeds her quota?

It may take a while for your workforce to learn the operational self-discipline to focus on the target rather than the clock. For some managers, this learning curve is rather anxiety-inducing. Over time, as everyone develops a sense of self-determination, you'll see productivity rise.

Flextime as a Trend, Not a Fad

According to the Bureau of Labor Statistics, about 30% of American workers said they were on some kind of flexible work schedule. As more employees desire a flexible schedule and as technology evolves, managers are increasingly comfortable that flexibility and control are not mutually exclusive. With telecommuting and teleconferencing, among other technologies, flextime and remote workers can still stay connected to the team.

And as companies become more global and as consumers increasingly expect 24/7 service, especially due to the Internet, allowing your employees to have flexible schedules, then flextime becomes a necessity to compete in this 21st-century marketplace.

Allowable Plan Expenses: Can the Plan Pay?

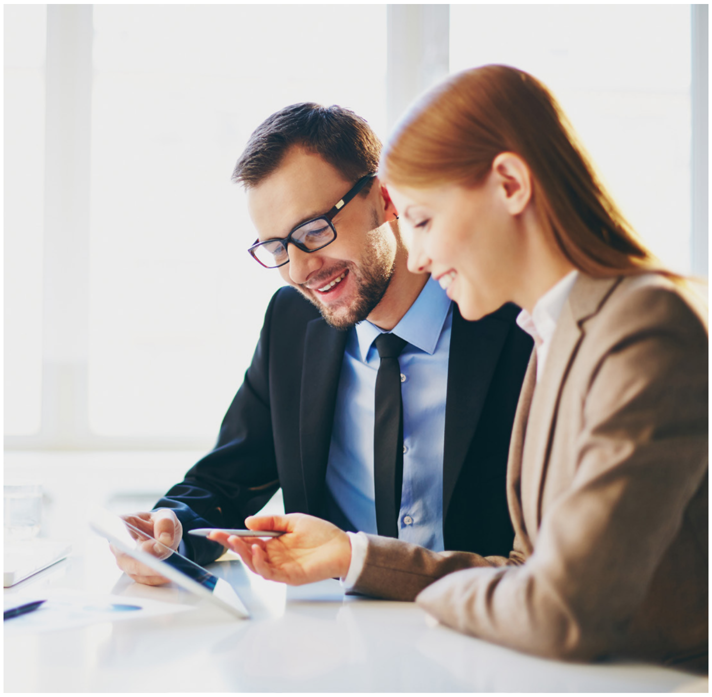
RETIREMENT

As NFP's retirement consultants work with their plan sponsor clients, the issue of what plan services can be paid for with plan assets often arises. The payment of expenses by an ERISA retirement plan (401(k), defined benefit plan, money purchase plan, etc.) out of plan assets is subject to ERISA's fiduciary rules. The "exclusive benefit rule" requires that a plan's assets be used exclusively for providing benefits. ERISA also imposes upon fiduciaries the duty to defray reasonable expenses of plan administration. General principles of allowable expenses include the following:

- The expenses must be necessary for the administration of the plan.
- The plan's document and trust agreement must permit use of plan assets for payment of expenses.
- The expenses must be reasonable and incurred primarily for the benefit of participants/beneficiaries.
- The expense cannot be the result of a transaction that's a prohibited transaction under ERISA, or it must qualify under an exemption from the prohibited transaction rules.

In light of today's plan fee environment, it's incumbent upon fiduciaries to request full disclosure of fees and expenses, and how they breakdown with services provided, as well as a full explanation of who will be the recipient of fees.

Ultimately, the ability to pay expenses from a plan trust is a facts-and-circumstances determination that needs to be made by plan fiduciaries. Because it's possible that the Department of Labor may challenge such determinations, it's important that fiduciaries consult ERISA counsel prior to paying questionable expenses from a plan trust and document the decision and the reasoning behind it.



How to Minimize the Impact of FSA Carryovers on HSA Eligibility

COMPLIANCE

Now that FSA carryover is allowed by the IRS, many employers have adopted a health FSA carryover provision. Such a provision lets employees carry over up to $500 from one plan year to the next. The carryover has become more popular and serves as a way to minimize the impact of the general use-or-lose rule (i.e., if employees don't spend down their FSA amounts by the end of the plan year, they lose that money). While helpful for FSA purposes, a carryover provision in an FSA can impact HSA eligibility. This issue may arise, for example, where an employee was enrolled in a health FSA during 2016 but wants to enroll in an HDHP plan for the upcoming calendar year (offered at open enrollment by the employer). The employee may enroll in the HDHP thinking that it qualifies them for HSA eligibility. However, the presence of FSA coverage generally disqualifies any employee from HSA eligibility. For an FSA with a carryover where the employee has more than a $0 balance at the end of the plan year, the FSA coverage would be considered present throughout the entire following plan year. This means an individual with that FSA coverage would be unable to establish or contribute to an HSA (even though they have the requisite HDHP coverage).

Several strategies can be implemented to avoid this problem:

- Allow employees to decline or waive their carryovers prior to the beginning of the next plan year. Employers should adopt that option into the health FSA plan document and notify employees of the option prior to the beginning of the plan year. It's unclear whether an employer can retroactively adopt that change (i.e., make the change at the end of 2016 for 2016 plan year elections). The better approach is to ensure that the waiver of carryover provision is implemented into the plan documents prior to the beginning of the plan year to which the election relates.
- Allow the unused carryover amounts to be carried over into an HSA-compatible FSA. Some FSA coverage is permissible when it comes to HSA eligibility, including a limited-purpose FSA (one that covers only dental or vision expenses) or a post-deductible FSA (one that kicks in only once the employee has paid the statutory deductible amount). That might require a retroactive adoption of a plan document (if the employer doesn't already have an HSA-compatible FSA, or just an amendment to a current HSA-compatible FSA — and a corresponding amendment to the general FSA that states that rollover amounts will be automatically rolled into the HSA-compatible FSA where the employee has elected HDHP/HSA coverage for the following year). Again, employers will need to add that language to the FSA plan documents.

By adding a waiver or a rollover provision to the health FSA carryover, the employer can preserve HSA eligibility for those that want HSA coverage in the following year, while also maintaining the flexibility of having the carryover for other employees (those that don't need or have HSA coverage). Employers should work with their advisors and/or outside counsel in making changes to their health FSA plan documents.

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