

## **Employers Can Extend the Flexible Spending Account Run-Out Deadline Due to COVID-19**

In response to the COVID-19 pandemic and related uncertainty, many employers are endeavoring to make lives easier for their employees and plan participants.

### **Q: Can employers to extend the FSA reimbursement submission deadline?**

**A:** Yes, employers can extend the deadline for submission of flexible spending account (“FSA”) claim documentation. There is no law that stipulates the maximum length of the run-out period for an FSA. A run-out period of 90 days or 3 months is the most common period, but nothing prohibits an employer from establishing a longer run-out period. *The only specific requirement is that the expense must have been incurred during the plan year.*

As long as the expense was incurred during the FSA plan year, the Section 125 regulations provide that “actual reimbursement of covered medical care expenses may be made after the applicable period of coverage.” Keep in mind that any decision by an employer to extend the run-out period must be administered uniformly.

### **Q: What is required for an employer to extend the FSA submission deadline?**

**A:** An employer needs to amend its Section 125 (or cafeteria) plan document to extend the FSA run-out period. However, given the extenuating and very fluid circumstances related to the COVID-19 pandemic, from a practical standpoint it may be more efficient for an employer to establish the amended policy and communicate it to employees in writing before actually amending the plan. This should be acceptable as long as a retroactive amendment is formally adopted within a reasonable time period.

### **Q: Should employers have any concerns about extending the FSA submission deadline?**

**A:** The timing of FSA claims submissions is not an area of significant concern for the IRS, so any reasonable steps put in place to provide employees with relief should be acceptable as long as it is documented in writing. Given the gravity of the current COVID-19 situation, the IRS would likely look more highly upon employers who provide more flexibility for their employees. As long as the employer communicates the change to employees and formally amends the plan within a reasonable time, there should be no legal or compliance-related concerns related to extending the deadline.

## **Contact Us**

Reach out to Fraser Stryker's employee benefits & ERISA attorneys for more information:

**Emily Langdon**  
[elangdon@fraserstryker.com](mailto:elangdon@fraserstryker.com)  
(402) 978-5386

*This article has been prepared for general information purposes and (1) does not create or constitute an attorney-client relationship, (2) is not intended as a solicitation, (3) is not intended to convey or constitute legal advice, and (4) is not a substitute for obtaining legal advice from a qualified attorney. Always seek professional counsel prior to taking action.*