



Simple Cafeteria Plans

Step 1: Decide Whether to Establish A Simple Cafeteria Plan

The first step is to decide whether to establish a simple cafeteria plan. Questions to be addressed include the following:

Is the employer eligible? This question will involve analyzing the size of the employer's workforce during the past two years. Plans for future growth should also be considered. Note that related businesses may have to be taken into account.

Is the employer willing and able to make the required contributions? The employer should determine how much it will be required to contribute under the simple cafeteria plan rules. Is the employer likely to have difficulty with non-discrimination testing? If not, a simple cafeteria plan may not be appropriate.

Step 2: Decide on Plan Terms

Once an employer has decided to establish a simple cafeteria plan, there are some details to be worked out. Here are some of the most significant issues that should be addressed.

- What contribution method will the employer use – elective or matching?
- Will contributions be limited to the minimum required amount or will there be additional contributions?

- Who will be eligible for the plan – only those employees required under the simple cafeteria plan rules, or will other employees also be allowed to participate?
- If the employer already has a cafeteria plan, do its eligibility provisions need to be amended in order to comply with the simple cafeteria plan rules?
- Will the plan exclude from participation any of the categories of excludable employees?
- Can everyone who is eligible for the cafeteria plan elect any of the plan's component benefits (subject to any terms and conditions that apply to all participants)? If not, the component benefits may need to be amended; this may require consultation with insurers or other third-party service providers.

Step 3: Adopt or Amend the Plan

The next step is to adopt a simple cafeteria plan or, if the employer already maintains a cafeteria plan, to amend the plan so that it includes the provisions needed to qualify as a simple cafeteria plan. This step will require preparation of a plan document or plan amendment, as applicable, and its timely adoption by appropriate corporate action.

The document or amendment should reflect the plan design decisions made during Steps 1 and 2, should be prepared or reviewed by legal counsel, and should be adopted before the first plan year for the simple cafeteria plan will be offered. A copy of the document or amendment should be kept with the plan's records.

Step 4: Communicate the Simple Cafeteria Plan to Employees

The simple cafeteria plan should be communicated in writing to employees.

1. Did you employ an average of 100 or fewer employees on business days during either of the two preceding years?
 - a. Must count leased employees
 - b. Silent as to part-time or seasonal
 - c. For new employers, the determination is based on the average number of employees that the employer reasonably expects to employ on business days during the current year
 - d. For growing employers, an employer will continue to be treated as an eligible employer until the year following the first year in which it employs an average of 200 or more employees on business days
2. Are all non-excludable employees with at least 1,000 hours of service during the preceding plan year eligible to participate in the plan?
3. Do you contribute a uniform percentage (but not less than 2%) of the employee's compensation for the plan year? Or, an amount that equals or exceeds the lesser of 1) 6% of the employee's compensation for the plan year, or 2) twice the employee's salary reduction contributions?
 - a. Compensation is defined under § 414(s).
 - b. Same method must be used for all employees and available for the application toward the cost of any qualified benefit
4. Who can I exclude when counting employees?
 - a. Those under age 21
 - b. Those with less than one year of service
 - c. Those covered by a collective bargaining agreement
 - d. Certain nonresident aliens working outside the U.S.
 - e. Note, also, employees with 1,000 hours of service must be eligible to participate; they must be able to elect any benefit available under the plan; and, finally, simple cafeteria plans remain subject to general cafeteria plan rules
5. Which non-discrimination requirements are covered by the safe harbor?
 - a. Code §125(b) rules for cafeteria plans
 - b. Code §105(h) rules for self-insured medical reimbursement plans
 - c. Code §129(d) rules for DCAPs
 - d. Code §79(d) non-discrimination rules for group term life insurance