

Flex Plans and Debit Cards, What do we need to know?

You are the enrollment manager of a growing PEO that prides itself in offering state of the art benefits, you are leading an employee meeting for a new client, and you are proudly holding up your Flexible Spending Account debit card for the first time. You say the card serves as a means for participants to draw flex dollars directly from their health or dependent care flexible savings accounts, and the employee meeting attendees immediately notice your PEO's logo embossed on the card. Knowing that introduction of the card will increase participation in the PEOs Flex Plan, you begin to tell your group how the plan works, and how to use the card.

Have you reached this stage yet in the management of the Flexible Spending Plan employee benefit? Many PEOs have taken a serious approach to managing this employee benefit into a PEO profit center. As an employer, a PEO can decrease its FICA and other employment taxes to the extent they can encourage their worksite employees to participate. Many PEOs are dropping over \$300,000 annually to the bottom line in FICA savings as a result of these plans, and are focusing their efforts towards putting the tools in place to foster increased participation. If you haven't implemented the Flex Plan debit card yet, it is likely that you will in the future, both to meet the growing expectations of your worksite employees AND to remain competitive in your market.

Market history has shown that the Flex Plan debit cards foster increased participation because that intangible benefit that you have tried to communicate in the past has just become tangible: they see you holding it in your hand, and they want it their hands, too.

Section 125 Cafeteria Plans, also known as Flexible Spending Plans, came into existence as an employee benefit in 1978, and now over 60 million employees participate in these plans through their employer. The plans allow employees to spend money on expenses they would be spending money on anyway, only with pre-tax dollars. This gives the employees an increase in take home pay because their taxable income is lowered to the extent they participate in the plan, and the employer also enjoys a break in employment taxes. Typically, an employer will offer a "POP" or premium only plan (employee's portion of health premiums), a health FSA (for unreimbursed out-of-pocket medical expenses), and a Dependent care FSA (for day care expenses). Many employers also offer the individual premium FSA (for health related premiums employees pay for from home).

For PEOs in the co-employment environment, there are additional issues the PEOs are confronted with. For instance, should your Flex Plan be a single employer plan, or a multi-employer plan that is now mandated for 401k plans? Benefits attorneys will advise their clients to do one or the other, depending on their experience and biases, but all attorneys agree that there is no current requirement in the regulations for a multi-employer plan. Many PEOs will adopt a multi-employer plan strategy if their worksite employer-clients have their own health insurance policies. Your benefits counsel will lead you through the best strategies.

Another issue facing PEOs in managing these plans is whether to keep or pass on the FICA savings. While a majority of PEOs keep the FICA savings, a large number will pass on the FICA savings to their clients. This is, of course, not addressed in the regulations for co-employers, giving rise to a diverse range of opinion from counsel. It is this author's firm opinion that the IRS intends that the employer managing plan and taking the risk should also be the employer enjoying the FICA savings, because, as with insurance, the risk and reward go hand in hand. Clients actually look to the PEOs to manage employment risk, and once a PEO crunches the numbers, the strategy of keeping the FICA savings looks very attractive. If you are a PEO that passes the FICA savings on, then hopefully you are not keeping the risk of employees overspending their accounts then leaving employment before their flex account is fully funded. Client service agreements are easily amended to spell out the worksite employers' obligations in this regard.

Flex plans can be complex in the co-employment environment, but PEOs that have switched to using the Flex Plan debit card have experienced increased participation in the plans, increased FICA savings, and increased employee satisfaction in the benefit. Use of the card, however requires a slight adjustment in thinking and communication. It is of paramount importance to communicate that the card is a convenience in that the participant gets his or her money up front, since the provider is paid at the point of sale by VISA or Mastercard, BUT the participant will likely still have to submit a receipt to the Flex Plan Administrator, usually 80% of the time. This is because the IRS still has claim substantiation rules, meaning the employer is responsible for making sure the plan remains a qualifying plan to keep its tax favorable treatment. As long as the IRS rules are followed, the expenses paid through the plan are paid on a pre-tax basis. In addition to the requirement of having a plan document, the IRS requires that the employer make sure the expenses conform to its guidelines under Section 213d of the IRS Code. Section 213d identifies qualified expenses as those incurred to address personal injury or illness of the employee or immediate family. A claim coming from a dentist needs to be reviewed to make sure the procedure was a filling, and was not for bleaching of the teeth. A claim from a pharmacy needs to be reviewed to make sure the expense was for aspirin, not for vitamins. Accordingly, the IRS requires employers and administrators to follow the regulations to make sure the expenses are proper plan expenses.

The most important thing, then, to communicate to employees using the card is that it is a convenience because you get your money up front, but the IRS still requires employers to review the claims, so keep your receipts and send them in if you are asked to do so.

The second most important thing to tell employees is that in 2 weeks they will be receiving their Flex Plan debit card in the mail, it will be in a plain white envelope, **DON'T THROW IT AWAY!** This will happen to some extent, regardless.

The third most important thing to say is that the card technology is such that it may not work 5% of the time, and not to worry, just pay for it, submit the claim the old fashion way, and you will be quickly reimbursed. The cards only know where they are, not what

they are buying. This is because the Flex Plan debit cards operate off of Merchant Codes, of which there are about 3000. These codes are programmed into the registers at the point of sale, and allow the electronic identification of what type of merchant was visited, such as 'gas station' or 'restaurant'. Most administrators turn on about 30 of the 3000 merchant codes, such as 'pharmacies' and 'hospitals', that are medically related. The card will not work at a gas station, it will work at a pharmacy. Given this, if a participant goes to grocery store that has a pharmacy in it, and the manager set the register at the pharmacy for 'grocery store', then the purchase will be declined.

Once you have accepted the Flex Plan and debit card into your PEO culture, communication becomes easier, and all appropriate staff will be able to field the issues raised above. Despite the issues PEOs face in managing this employee benefit in the co-employment environment, once the issues are thought through they can and do experience great success in increasing employee participation and satisfaction, and creating savings for the employer (preferably the PEO). The debit card, once implemented will serve to increase participation further, and it can be a very pleasant experience for its users provided proper communication is made, as recommended above.

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