

Best Practices for Section 125 Plan Success

Course Approved for One (1) Hour CE Credit

Presented by: Jo Ann Vernon, CFC, PrimePay

Ryan Esway, LISI



CE Instructions - Requirements

- Today's CE Course has been approved for one (1) Continuing Education Credit (Life & Health) in certain states
- During the Instructional Period, you may not conduct other business or read materials unrelated to the course.
- All electronic devices must be silenced.
- Each State requires attendance for 100% of the approved class hours. If you arrive after the class has begun, or if you are late returning from breaks, you may be denied credit for the course.
- Upon successful completion of the course, you will be issued a Course Completion Document (Certificate) showing the course approval number, eligible license classes and the number of credits you have received for completing the class.

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Jo Ann Vernon, CFC

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Jo Ann Vernon is the Regional Advisor, Broker Concierge for PrimePay, a national employee management solutions provider, offering a full range of integrated payroll, benefits services and HR support. Jo Ann enjoys working with brokers to strategize and develop comprehensive solutions for their clients. After 24 years of experience in the employee benefits industry, Jo Ann has seen the industry change and morph in many different directions. What hasn't changed is the need and guidance that our employers need with new regulations and ongoing regulations. A self proclaimed insurance nerd, Jo Ann loves to dive in and dissect insurance documents and work with brokers to make sure that clients are in compliance. A firm believer in giving back to the industry she volunteers and continues to serve in leadership roles with the National Association of Health Underwriters. She is a published author with articles appearing in the California Broker Magazine as well as American Benefit Specialist.

Best Practices for Section 125 Plan Success



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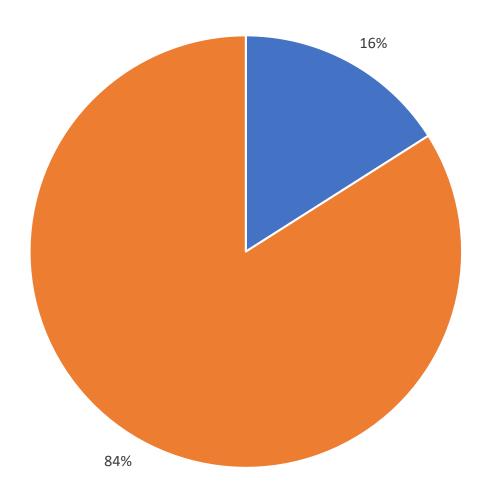


Perspective & Industry Trends

Section 125



Contribution Status



- ERs Pay 100%
- Shared Responsibility



Section 125 Overview

- Cafeteria plans (often called flexible benefit programs or flex plans) are employer-sponsored benefit programs offering tax advantages under §125 of the Internal Revenue Code.
- A section 125 plan is the only means by which an employer can offer employees a choice between taxable and nontaxable benefits without the choice causing the benefits to become taxable.
- A cafeteria plan allows an employee to pay for certain benefits from gross pay, before federal income taxes, Social Security taxes, and, in most instances, state income taxes, are deducted.
- As noted in the SHRM study; employers continue to offer more employee benefits to attract and retain talent; in turn, successfully implementing Section 125 strategies (POP and Flex) is smart business.

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- **✓** Medical
- **✓** Dental
- ✓ Vision
- ✓ Prescription Drug
- ✓ Life
- ✓ STD
- ✓ LTD

- ✓AD&D
- ✓ Wellness Plan
- ✓ Group Voluntary Life
- ✓ FSA
- **✓**HSA
- **✓** DCAP
- ✓ Adoption Assistance

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Plans that <u>Can't</u> be offered via Section 125



- ✓Group Dependent Life
- **✓**HRA
- ✓ Archer MSA
- ✓ Prepaid Legal
- ✓ Transit-Commuter Benefits

- ✓ Voluntary Life
- ✓ Voluntary Dependent Life
- ✓ Voluntary AD&D
- ✓ Voluntary LTD
- ✓ Voluntary STD
- ✓ Voluntary Long Term Care
- ✓ Voluntary Critical Illness and Cancer

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⁼ in the case or both contributing, EK contributions may be pre or post tax, EE contributions can be pre or post tax but only pre-tax with valid 125 document

† - Only in the event that health services such as counseling or hotline interventions are provided; if not, do not include, not ERISA. ©PrimePay, LLC



Poll Question #1

Section 125



Section 125 Key Advantages

Tax Savings and Richer Employee Benefits

• Key <u>Employee</u> Advantage: Reducing income subject to payroll taxes and increasing take home pay.

• Key <u>Employer</u> Advantage: Tax Savings: The employer saves money on all dollars that are run through a 125 plan because it reduces the employers payroll. Accordingly, the employer does not pay FICA on these dollars. Amounts paid through a cafeteria plan reduce the salary base used to calculate employment taxes.

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Section 125 Key Disadvantages

■ Key <u>Employee</u> Disadvantages

- An employee may not change his or her elections unless they experience a Qualifying Event; such as, birth of a child or marriage.
- Section 125 reduces an employees taxable income; in turn, it may reduce benefits that are calculated using the employees income; such as, social security or retirements benefits.
- Unused funds that remain in a Flexible Spending Account after the end of the plan year, applicable grace period, or voluntary/involuntary terminations are lost.

■ Key <u>Employer</u> Disadvantages

- Cost and compliance requirements of maintaining Section 125 plans (POP and FSA)
- Risk of financial loss (uniform coverage rule specific to Health Flexible Spending Account)

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Cafeteria Plans – Section 125 <u>Premium Only Plan:</u> Est. 1978

- A Section 125 <u>Premium Only Plan</u> (POP) allows employees to pay insurance premium contributions, on allowed plans, with pre-tax dollars. This means an employee can save upwards of 40% in taxes on their contributions; Federal, State, Medicare, Social Security, and Unemployment taxes (when allowed by State).
- Key <u>Employee</u> Advantage: Employees have more take home pay because they reduce payroll taxes on pre-tax insurance contributions.
- Key <u>Employer</u> Advantage: The employer saves because amounts paid through a cafeteria plan reduce payroll costs.

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Premium Only Plan (POP)

- A premium only plan (POP), or premium conversion plan: The employer is simply offering a way to obtain favorable tax treatment on benefits already offered. POPs work in the following ways:
 - Employees' premium contributions are automatically deducted from their salaries before taxes are taken out.
 - Taxable income is reduced by the amount contributed, so employees pay less in taxes and have more take-home pay.
 - With employee taxable income reduced, employers and employees pay less in FICA payroll taxes.
 - Premiums sheltered through premium conversion must be for coverage under an employer-sponsored group plan offering qualified benefits, using group health coverage.
- Most companies currently have this set up through their payroll provider. A POP plan is the simplest type of §125 plan and requires little maintenance once it has been established.



Section 125 - <u>Flexible Spending</u> <u>Accounts (FSA)</u>

- A *flexible spending account (FSA)* is a qualified benefit under an employer-sponsored cafeteria plan. The FSA enables employees to deduct dollars from their paycheck and put them into a special account that is protected from taxes. There are three types of FSAs:
 - o Health care flexible spending account (HFSA).
 - o Limited Purpose flexible spending account (LPFSA)
 - o Dependent care flexible spending account (DCAP)
- HFSAs and DCAPs are separate accounts. Employees may participate in either one or both accounts, but cannot transfer money from one to the other.

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Section 125 - Flexible Spending Accounts (FSA)

- Health Care Flexible Spending Account (HFSA) HFSA's can reimburse expenses for employees and dependents. An employee is not required to be covered by the group health plan in order to participate in an employer's HFSA, but they must be <u>eligible</u> to participate in the employer group health plan.
- An HFSA can reimburse most expenses for "health care" as defined by the IRS: the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body, and transportation primarily for and essential to medical care.
- Examples of eligible expenses include the following:
 - Eyeglasses and contact lenses
 - Medical insurance deductibles
 - o Prescriptions
 - o Co-payments
 - o Orthodontia
 - Chiropractic services
 - o Dental treatments
 - o X-ray and laboratory services
 - o Care provided by doctors or specialists who are not within the employee's insurance network
- 2018 maximum contribution to a HFSA is \$2,650

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HFSAs <u>cannot</u> be used for the following expenses:

- Health insurance premiums
- Long-term care coverage or expenses
- Amounts that are reimbursed by another health plan
- Cosmetic surgery
- Hair transplants
- Household help
- Maternity clothes
- Vitamins and supplements for general health
- Personal use items

■ **REMEMBER:** Over-the-counter (OTC) drugs and medications, with the exception of insulin, are eligible only if prescribed by a doctor

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Section 125 - Full Cafeteria Plan

- Examples of benefits that may be purchased through a *Full Cafeteria Plan*:
- ✓ Medical
- **✓** DCAP
- ✓ AD&D
- ✓ Wellness Plan
- **✓** Dental
- ✓ Vision
- ✓ Prescription Drug
- ✓ Life
- ✓ STD
- ✓ LTD
- ✓ HSA

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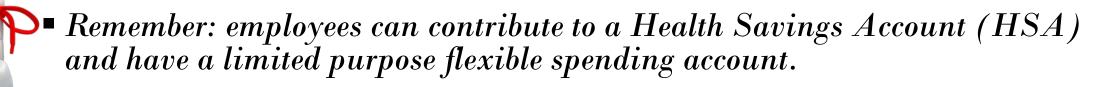


Section 125 - <u>Limited Purpose Flexible Spending</u> <u>Account (LPFSA)</u>

■ Limited-Purpose Flexible Spending Account (LPFSA)

2018 maximum contribution to a LPFSA is \$2650.

■ A limited-purpose flexible spending account (LPFSA) is an HFSA that only reimburses limited types of expenses - such as qualified dental and vision expenses.



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Poll Question #2

Section 125

Section 125 - <u>Dependent Care Flexible</u> <u>Spending Accounts (DCAP)</u>



- DCAPs cover the costs of any caregiver providing services to an employee's child or disabled dependent so that the employee and the employee's spouse can work, look for work, or attend school full time.
- Typical covered expenses include the following:
 - Day care for a child under the age of 13
 - After-school caregivers
 - Elder care for dependent parents
 - o Care for a disabled spouse or a dependent incapable of caring for self
 - o Care-related services (such as a visiting nurse)
 - Summer <u>day</u> camps
- Remember: Employees cannot take a tax credit for child care expenses on their income tax return and claim the same expenses through a DCAP. Employees need to decide which option using a DCAP or claiming a tax credit is better for their particular financial situation.
- Maximum Contributions
 - The law calls for a \$5,000 per household limit on the amount of pretax pay that can be set aside for a DCAP. An employee who is married and filing separately may only set aside \$2,500 for a DCAP per year. The DCAP limits apply per calendar year.
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Section 125/137 - Adoption Assistance

- Adoption assistance programs may be included in a cafeteria plan (language specific to adoption assistance must be included in the plan document). These programs provide employees with an exclusion from gross income for expenses incurred for qualified expenses in connection with the adoption of a child.
- Adoption assistance benefits provided in a cafeteria plan <u>are subject to social security</u>,
 <u>Medicare</u>, and <u>FUTA taxes</u>, <u>but not income tax withholding</u>.
- The only election change event expressly applicable to adoption assistance benefits is the change in status event that permits a change in election for "commencement or termination of an adoption proceeding."
- 2 ½ month grace period is allowed to file claims for adoption assistance reimbursement for expenses that were incurred during the 12-month plan year No \$500 carryover allowed.
- The maximum amount that may be excluded from an employee's gross income under an employer-provided adoption assistance program for the adoption of a child is \$13,840 for 2018.

Premium Reimbursement Accounts



- IRC § 125: The PRA generally follows the rules of an FSA Plan
- Only Account restricted to individual medical premiums
- Eligible for both Employer AND Employee contributions
- Non-discrimination Testing applies
- Plan documents required



Key Components



Key Components of a Cafeteria Plan

- The formal requirements of a cafeteria plan include the following:
 - The cafeteria plan must be set forth in a written plan document and adopted by the Employer.
 - The plan must offer participants a choice between cash and one or more qualified benefits.
 - o All participants must be employees.
 - An election to take a qualified benefit in lieu of cash must be made prior to the beginning of the plan year.
 - Participant elections must be irrevocable, unless the plan includes one or more permitted election change events (e.g., change in family status events).
 - Contributions or benefits provided must not discriminate in favor of highly compensated employees or their dependents.
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Key Component - Written Plan



- Plan Document The plan document is a written document that describes the participant's rights, benefits, and obligations within the plan, as well as the plan's terms & conditions for administering the plan.
- Every employer who maintains a Health & Welfare Benefit Plan that is subject to ERISA must have a separate written plan document for each.

REMEMBER - It is important to note that a Summary Plan Description (SPD), Certificate of Coverage, Summary of Benefits and Coverage, and a Master Contract is <u>not</u> a Plan Document.



Formal Requirements

- The Summary Plan Description (SPD) is an important written document that a <u>plan administrator</u> must provide automatically and free of charge to participants of an ERISA covered health benefit plan.
- The SPD is designed to inform participants and their beneficiaries of their benefits and rights under the plan.
- The distribution of the SPD is the sole responsibility of the plan administrator and not the insurer or TPA.
- The Department of Labor (DOL) requires plan administrators to provide participants with an SPD within 90 days of coverage or within 120 days of the plans effective date.

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Key Component: Nondiscrimination Testing



- Cafeteria plans, HFSAs, LPFSAs, and DCAPs allow employers and participants to enjoy tax advantages by using them.
- The IRS created a series of tests designed to make sure that certain highly compensated participants don't use or select more nontaxable (pre-tax) benefits than rank-and-file (non-highly compensated) employees.
- For plan testing purposes, the rules treat two or more companies as a single employer if there is enough common ownership or a combination of joint ownership and common activity.

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■ Is NDT Required?

• Yes. In order to document a plan is incompliance, an annual test must be performed and the results documented for each plan.

What Happens If My Plan Fails The Tests?

- The nondiscrimination tests can't be passed by making corrections after the end of the plan year.
- Benefits that fail the nondiscrimination test are included in gross income for highly compensated participants.
- The employer must treat the amount of highly compensated employees' salary reductions as taxable income for W-2 reporting and for income tax, FICA and FUTA withholding.

When Should Plans Be Tested?

o The plan tests must be passed as of the last day of the plan year.

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Benefit Type	Eligibility	Benefits	Contribution & Benefits	Key Employee Concentration	More than 5% Owners Concentration	55% Average Benefits	N/A
Cafeteria Plans / POP	✓		✓	✓			
Health FSA	\checkmark	\checkmark					
Dependent Care	✓		✓		✓	✓	
Group Term Life	\checkmark	\checkmark					
Self-Insured Plans	✓	\checkmark					
Fully-Insured Plans							✓
Adoption Assistance	✓				✓		

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Key Components- Qualified Expense Substantiation/Reimbursements



- To receive reimbursement from an FSA for a qualified expense, an employee must submit a claim to the FSA administrator.
- Employees need to submit proof that they made a payment and that the expense was of the type that is covered by the FSA. Documentation requirements vary depending on the FSA administrator, however some information is always required.
- Debit Card most often an employer provides an FSA debit card that allows participants to pay for health care expenses (HFSA and LPFSA not DCAP) directly from their account rather than having to submit a claim and wait for reimbursement. Federal regulations apply to the use of debit cards for FSAs and providers and employees may be required to "substantiate" (produce supporting documentation) for each expense.



Key Components- Qualified Expense Substantiation/Reimbursements



- The amount that can be withdrawn at a particular time differs for the three types of FSAs as follows:
 - o Dependent care (DCAP). Claims may be reimbursed up to the amount that is in the employee's DCAP account at the time of the request.
 - Health care (HFSA and LPFSA). The employee's entire annual election amount is available to the employee from the first day of the plan year, even if the employee has not put the full amount in yet.
- Remember: The employer bears the risk of the employee leaving the company before the employee has contributed the full elected amount into the HFSA. On the other hand, employees forfeit contributions made to their HFSAs and LPFSAs if they do not use the funds to reimburse eligible expenses.

Key Components- Qualified Expense Substantiation/Reimbursements



- A critical element of an FSA is the "<u>Use it or Lose it</u>" rule.
- Grace Period
 - The employer's plan may provide for a grace period of up to two and one-half months after the plan's year-end date during which unused benefits or contributions can be used.

Run-out Period

- o Employers may allow a run-out period to submit claims for the previous year.
- Carry-over Period (HFSA only)
 - For HFSAs only, the employee may carryover up to \$500 to be used in the subsequent year.

■ Forfeited Funds

Depending on the plan, forfeited funds may go back to the employer or FSA administrator, but no matter where the forfeited funds go, the important fact is that the employee loses that money.
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Section 125 - Are you in compliance?

Critical questions to ask



Section 125 - Are you in compliance?

Premium Only Plan (POP)

- Have you amended your documents and verified your administrative practices are consistent with the document?
- Have you amended your POP to allow for the marketplace and stability period plan changes?
- If you renewed your medical plan early; have you amended your plan documents?
- Have you amended your POP document to include HSA contributions made through pre-tax payroll deductions, if applicable?
- Have you completed Nondiscrimination Testing for your POP plan?



Section 125 - Are you in compliance?

Flexible Spending Account (HFSA, LPFSA and DCAP)

- If you offer an FSA, do you also offer a group health plan?
- Is the FSA eligibility the same as your medical plan eligibility?
- Have documents been update with new annual medical FSA maximum?
- If you adopted the \$500 carryover did you remove the grace period language?
- Do you include FSA information and premium in your COBRA notices?
- If you had an early medical plan renewal, have you amended your documents to change the FSA plan year to a short plan year to coordinate with the new medical plan year?
- Have you completed Nondiscrimination Testing on your HFSA and DCAP?





	C-Corp Shareholder	S-Corp – more than 2% Owner	Limited Partner (if not receiving guaranteed payments)	Limited Partner (if receiving guaranteed payments)	General Partners	Sole Proprietor	LLC Member**
Employee	Yes	No	Yes	No	No	No	**
Spouse	Yes	No	Yes	Yes*	Yes*	Yes*	**
Dependent	Yes	No	Yes	Yes	Yes	Yes	**

^{*}Must be a bona fide employee and may not be deemed to be self employed. Spouse must not have invested his or her own assets in the business and must not be an owner under state marital or community property laws.

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^{**}Employee may participate ONLY if the LLC is taxed as a C-Corporation

^{**}Spouse and Dependent participation is based on how the member is treated.





COBRA, continuation of group health coverage regulatory requirements, apply to:

- Medical Flexible Spending Account
- Limited Purpose Medical Spending Account

COBRA has to be offered if the participant has more benefit dollars in their FSA or LPFSA than is required to contribute for the rest of the plan year.

COBRA, continuation of group health coverage regulatory requirements, does NOT apply to:

- Dependent Care Flexible Spending Accounts (DCAP)
- Adoption Assistance Plans



Poll Question #3

Section 125



Best Practices

Section 125 Best Practices - <u>Tax Savings and</u> <u>Funding</u>



Tax Savings*

	<u>Employer</u>	<u>Employee</u>
■ Premium Only Plan	7.65%	20-40%
■ Health Flexible Spending Account	7.65%	20- $40%$
■ Dependent Care Account	7.65%	20- $40%$

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^{*}Employer saves the matching Social Security (6.20%) and Medicare (1.45%) taxes. Pre-tax contributions reduce payroll amounts.

^{*}Employee saves city, state, and federal income taxes, plus the matching portion of Social Security and Medicare taxes.

Section 125 Best Practices - <u>Tax Savings and</u> <u>Funding</u>



- As stated, the FSA Maximum Benefit for 2018 is \$2,650 for employee pre-tax contributions.
- Employer Contributions: Benefits provided under a health FSA "are excepted for a class of participants" if the health FSA is a health flexible spending arrangement as defined in Code §106(c)(2)195 and satisfies two conditions:
 - o Maximum Benefit Condition. The maximum benefit payable under the health FSA to any participant in the class for a year cannot exceed two times the participant's salary reduction election under the health FSA for the year (or, if greater, the amount of the participant's salary reduction election for the health FSA for the year plus \$500).
 - Availability Condition. Other nonexcepted group health plan coverage (e.g., major medical coverage) must be made available for the year to the class of participants by reason of their employment.

Section 125 Best Practices - <u>Tax Savings and</u> <u>Funding</u>



- In some circumstances an employee can have a health FSA benefit greater than \$2,650.
 - o If the employer makes contributions to the employee's FSA accounts*, or
 - o If the health FSA includes the optional \$500 carryover provision and the employee has a carryover balance from the previous FSA plan year

*Nonelective employer contributions to a health FSA; such as matching or seed contributions, or flex credits, generally do not count toward the limit.

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Case Studies

Bringing Section 125 to Life

Section 125 - <u>EE Premium Only Plan</u> Savings Case Study



Employee earns \$60,000 gross pay annually

	Without a POP	With a POP
Gross Annual Pay	\$60,000	\$60,000
Health Insurance Premiums	\$6,000	\$6,000
Taxable Earnings	\$60,000	\$54,000
Average Tax Rate	27.65 %	27.65 %
Taxes Owed	\$16,590	\$14,931
		* 700
Monthly EE Tax Savings	\$0	\$ 138
Annual EE Tax Savings	\$0	\$1,659

Section 125 - <u>Employee FSA Savings</u> <u>Case Study</u>



Employee earns \$60,000 gross pay annually			
	Without an FSA	With an FSA	
Gross Annual Pay	\$60,000	\$60,000	
FSA Contribution	\$0	\$ 2,600	
Taxable Income	\$60,000	\$57,400	
Estimated Tax Withholdings	\$15,608	\$14,891	
Average Tax Rate	26.00 %	26.00 %	
Estimated Health Expenses	\$2,600	\$0	
Net Pay	\$41,792	\$42,509	
Monthly EE Tax Savings	\$0	\$ 59	
Annual EE Tax Savings	\$0	\$717	

Section 125 - <u>Employee DCAP Savings</u> <u>Case Study</u>



Employee earns \$60,000 gross pay annually			
	Without an FSA	With an FSA	
Gross Annual Pay	\$60,000	\$60,000	
DCAP Contribution	\$0	\$5,000	
Taxable Income	\$60,000	\$55,000	
Estimated Tax Withholdings	\$15,608	\$14,300	
Average Tax Rate	26.00 %	26.00 %	
Est. Dependent Care Expenses	\$5,000	\$0	
Net Pay	\$39,392	\$40,700	
	* 0		
Monthly EE Tax Savings	\$ 0	\$ 109	

\$0

\$1,308

Annual EE Tax Savings

Section 125 - <u>Employee POP, FSA and</u> <u>DCAP Savings Case Study</u>



Employee earns \$60,000 gross pay annually

Annual EE Tax Savings

	J	
	<u>Without</u>	With a POP, FSA, and DCAP
Gross Annual Pay	\$60,000	\$60,000
Health Insurance Premiums	\$0	\$ 6,000
Medical Flexible Spending Account	\$0	\$ 2,640
DCAP Contribution	\$0	\$ 4,992
Taxable Income	\$60,000	\$46,368
Average Tax Rate	27.65 %	27.65 %
Taxes Owed	\$16,590	\$12,820
Monthly EE Tax Savings	\$0	\$ 314 Rost Dractices for Sec

\$0

\$3,769

Section 125 Best Practices - <u>Technology</u> <u>Considerations and Strategies</u>



- Strategies that Work:
 - OHSA & Post-Deductible HRAs
 - o HSA with Limited-Use FSAs
 - o Percentage Split HRAs with FSAs

- Integrated Technology Partnerships
 - How can you use your Benefit Admin. Technology to assist and support your clients with Section 125?

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What is the next move for Employers?







Communicate

Distribute

- Do you offer any health and welfare benefits?
- Do you allow pre-tax employee contributions?
- Do you have a POP, HFSA, LPFSA, or DCAP?
- Do you have a Plan Document?
- Do you have an SPD and have distributed them to your employees?
- Have you performed the annual NDT on your Section 125 plans?

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THANK YOU FOR ATTENDING! DON'T FORGET TO SIGN YOUR ATTENDANCE SHEETS!!

52





Reminder for Next Week's Session

Technology: Transforming the Employee Benefit Industry
Presented by: Lisa Collins, CFC, PrimePay
Desare Kallingal, LISI

April 10th at 9:00am

THANK YOU FOR ATTENDING! DON'T FORGET TO SIGN YOUR ATTENDANCE SHEETS!!

53

