Benefits Insights

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Handling Errors Made During Open Enrollment

Despite an employer's best efforts to ensure a successful open enrollment, it's likely that some employees will still miss the enrollment deadline or mistakenly select the wrong benefits. Employees in these situations may ask their employer to allow them to correct their mistakes. While many employers may feel inclined to allow employees to correct their errors, it's critical to be aware of the applicable rules for addressing open enrollment errors before agreeing to let employees make changes.

This article discusses addressing post-election errors, making midyear changes and establishing best practices. It provides a general overview of these topics and is intended for informational purposes only. Due to the complexities involved, employers are encouraged to discuss any specific issues with legal counsel.

Addressing Election Errors

Most benefits plans renew on a calendar-year basis. While employees are able to change their elections until the start of the plan year, employers generally are not required to allow changes after open enrollment ends. Most organizations set their open enrollment deadline well in advance of the plan year for administrative reasons. Otherwise, if employers permitted employees to revise their elections until the start of the plan year, it would be extremely challenging to implement employee elections prior to the plan's coverage period.

Once most benefit plans renew, employees cannot make changes to their elections even if they made mistakes during open enrollment. In certain circumstances, however, employees may be allowed to make changes after a plan renews, such as correcting an error made by a plan administrator or after a qualifying life event.

If an employee requests to make corrections after open enrollment ends due to an error, the employer should consider the following:

Section 125 Plans

A Section 125 plan—or cafeteria plan—allows an employer to provide its employees with a choice between cash and certain qualified benefits without adverse tax consequences. With this type of plan, an employer's main concern when permitting employees to make corrections after open enrollment ends is complying with Internal Revenue Code (IRC) Section 125. These regulations require elections to be made prior to the start of the plan year. Once the plan year begins, elections are irrevocable for the duration of the plan unless an employee experiences a qualifying life event. Importantly, IRC Section 125 does not specifically permit election changes to correct errors.

In rare circumstances, the IRS' "doctrine of mistake" may allow individuals to make a correction after the plan year has started, according to online benefits data resource BenefitsPRO. This is based on informal, nonbinding guidance from the IRS. In order to qualify, there must be "clear and convincing" evidence of the mistake, which may include data entry errors or an employee making an election under a dependent care assistance plan when they do not have any children or qualifying dependents. However, permitting employees to make corrections becomes riskier the further into the plan year they are made.

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Before allowing an employee to make corrections under a Section 125 plan, an employer needs to consider the facts and circumstances of the error. Even if the employer determines an employee's election was truly an error, allowing the correction can be perilous because of the high standard of "clear and convincing" evidence. If the employer permits a correction, the IRS could disagree and initiate a costly enforcement action against the employer for potential violations.

ERISA Precedent

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established retirement and health plans to protect individuals. Under an ERISA plan, employers may allow post-open enrollment corrections. However, employers may establish an ERISA plan precedent by permitting an employee to make corrections after open enrollment ends. Creating a precedent would require an employer to allow other employees in similar situations to make post-open enrollment changes. ERISA plans require election changes to be completed before the plan year begins.

Insurance Carrier Limitations

With a fully insured plan, insurance carriers may not permit election changes outside the enrollment period because doing so would increase their financial risk. With a self-funded plan, an employer may have more leeway to allow corrections, but the employer may need to obtain approval from its stop-loss carrier if the requested election change involves adding coverage. Regardless of how a plan is funded, failing to obtain approval from the insurance carrier could result in the carrier refusing to cover claims resulting from the election change.

Qualifying Life Events

Once the plan year starts, employees generally can only make changes to their elections if they've experienced a qualifying life event. If an employee makes an error during open enrollment, they may be able to correct the error if they experience a qualifying life event and the election change is related to that event. Examples of common qualifying life events include the following:

- **Change in marital status**—This life event includes employees getting married or divorced, separating or having a spouse pass away.
- **Change in the number of dependents**—This allows employees who experience a birth, an adoption or a death of a child to change their elections later in the year.
- **Change in dependent status**—If an employee's child ages out of dependent status or becomes eligible for dependent status during the year, the employee may be permitted to change their elections.
- **Change in employment**—This allows employees who start a new job, quit or transition to part- or full-time status to make midyear election changes.
- **Change in residence**—Moving to a different zip code or county that changes an employee's health plan area may qualify as a life event.
- **Loss of health coverage**—Employees who lose their existing health care coverage or whose eligibility changes may modify their elections.

Establishing Open Enrollment Best Practices

As employees' ability to make corrections is limited once open enrollment closes, employers can help employees minimize the risk of election errors by ensuring open enrollment goes smoothly as possible. They can do this by establishing best practices. For example, employers can encourage employees to avoid waiting until the last minute to enroll since rushing can increase the chance of errors; they can communicate early with employees about open enrollment and benefits offerings, using multiple channels or leveraging technology to communicate frequently and effectively with employees. Additionally, offering benefits education and resources leading up to and during open enrollment can help employees understand their options and reduce the risk of errors.

Employers can also enforce hard open enrollment deadlines, after which employees aren't permitted to make changes. However, if an employer decides to allow post-open enrollment changes, they might consider establishing an outer limit, such as two weeks before the start of the plan year, where it won't accept further changes. This will allow employers to timely implement employee elections before the plan year and potentially limit election errors.

Summary

Understanding when employees can make post-election corrections can allow employers to avoid potential violations and legal liabilities. By establishing a successful open enrollment, employers can help employees reduce the risk of potential errors and the need for corrections.

Reach out to National Insurance Services for additional employee benefits resources, including enrollment guides, video messaging and presentations.