

## California Requires Employee Notice Regarding Flexible Spending Accounts

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A new California state law requires an employer to notify its employees who participate in a flexible spending account (including health, dependent care, or adoption assistance flexible spending accounts) of any deadline to withdraw their funds before the end of the plan year. The employer must provide such notice in at least two of the following five forms, only one of which may be electronic: (i) email, (ii) telephone, (iii) text message, (iv) postal mail, or (v) in-person. Given that many flexible spending accounts have run-out periods that extend after a plan year ends, it appears that this notice requirement would apply when there is a termination of employment or other loss of coverage that requires submission of claims before the end of the plan year. However, the legislative history indicates that the statute is concerned with the “use it or lose it” rule for flexible spending accounts. Guidance under this new state statute has yet to be issued, and the statute appears to be effective as of January 1, 2020. Although this new law should be preempted by ERISA as it applies to health flexible spending accounts (which are ERISA welfare benefit plans), ERISA does not apply to dependent care or adoption assistance flexible spending accounts.

The new statute is available [here](#).