

IRS Confirms Medical and Dependent Care Expense Reimbursement/Payment Requirements

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PRACTICES Employee Benefits and Executive Compensation

In its recent “Office of Chief Counsel Memorandum 202317020” (the “**Memo**”), the IRS addressed several fact situations regarding claims substantiation for reimbursement or payment of medical or dependent care expenses (collectively, “**Expenses**”) under a cafeteria plan’s flexible spending arrangement (“**FSA**”).

Although the Memo does not impose any new requirements, the Memo does reiterate and confirm a key requirement, as set out in the IRS’s previously-issued proposed cafeteria plan regulations (“**Regulations**”), that all Expenses must be properly substantiated as described in the Regulations. If the FSA reimburses or pays to the FSA participant his or her Expenses that are not properly substantiated, such reimbursement or payment constitutes taxable income to the participant and may trigger tax disqualification of the FSA.

The Memo discusses fact situations involving (i) self-certification of Expenses by the FSA participant, (ii) random sampling of Expenses, (iii) *de minimis* Expenses, and (iv) advance substantiation of dependent care Expenses. The Memo also confirms the application of the substantiation requirements applicable to each of the fact situations.

The Memo serves as a reminder that employers sponsoring FSAs should review the FSAs’ plan documents and Summary Plan Descriptions (“**SPDs**”), as well as administrative procedures and employee communications to ensure that the FSAs’ substantiation requirements comport with the Regulations. In addition, employers that have outsourced their FSAs’ administration to third-party service providers should consult such provider to confirm that reimbursements and payments of FSA Expenses are being administered in compliance with the plan documents and the Regulations as reinforced by the Memo.

The Memo is available [here](#).