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Experience and Expertise in Employee Benefit Solutions

For information on dates and subjects for our 2008 Compliance Workshops, or for a personal audit of your Section 125 Plan contact: Josh Dunn at 1-800-533-7896 ext. 5202 or jdunn@stoweassociates.com

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Is Your Section 125 Plan Up-to-Date?

How long has it been since you updated your Section 125 Plan Document? It's not a trick question, an inaccurate plan document may be a serious liability for a business. The problem for many businesses is that they don't know what to check for when reviewing their plan document.

Following are some of the most common issues that may necessitate a plan update.

Plan Year – For various reasons, businesses may need to change their 125 plan year. The most common reason for a change is an early or late renewal on fully insured health plan. Over time an employer may make several changes to their underlying benefits which could cause the plan year for the 125 plan to diverge further and further from the plan years for the benefits employees use the 125 plan to pay for.

In such a situation, employees are then expected to make a one year irrevocable election under the 125 plan without knowing what the premium may be in several months when the health plan renews. This can cause problems for employees in the event of a major rate increase because they now have few good options for changing their election mid-plan year. Ideally the 125 plan year and the plan year for all benefits offered under the plan should be the same. If they cannot all be the same, at a minimum, it is advised that the 125 plan year be synchronized with the plan year for the health plan.

Elections – 125 rules require that employers follow the election provisions within their plan document. If your plan document stipulates that you will hold a "positive" election prior to the beginning of the plan year, that's what you should be doing. If you are handling your elections in some other manner, an amendment to your plan document may be necessary.

Coverage Options – The IRS regulations state that a plan must describe each coverage option available under that plan. Some employer have plans that were put in place many years ago and do not include an up to date listing of available coverage options. If a particular coverage is not listed in the plan document, it cannot be withheld on a tax free basis through the 125 plan.

Types of Coverage – A section 125 plan is a great way to help employees afford valuable insurance coverage's. There are however some benefits which should not be included in a Section 125 plan, including life insurance in excess of \$50,000, disability, hospital income polices, cancer polices and long term care insurance. Employees who pay for these benefits through a 125 plan may incur a substantial tax liability in the event they ever collect on these benefits.

Election Changes – What types of changes does your plan allow? The IRS allows for certain types of changes besides those necessitated by FMLA or HIPAA but a plan may be more restrictive. An employer must follow their own plan document. If your plan document is more restrictive than what the IRS allows, you must follow those more restrictive rules, unless you amend your plan. Employers who allow participants to change elections for reasons other than those allowed by the IRS and the employers own plan document may face stiff penalties and potential disallowment of their plan.

A 125 plan is a great low cost benefit to provide to your employees. Unfortunately for the average HR Director, 125 plan administration is often at the bottom of a very long list of to-do's. It is very important however to make sure your plan is up to date so that your business and your employees are protected from some of the potential pitfalls of 125 non compliance.

If it's too much to handle on your own, engage the services of a knowledgeable insurance agent or third party administrator. While they cannot take on the liability for operation of your plan, they can help steer you in the right direction and assist you in updating your plan.

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The Focus

E-Verify Questions and Answers

E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

Q : Am I Required to Participate?

No. E-Verify is voluntary for all employers with very limited exceptions. (Some Federal government employers and violators of certain immigration laws may be ordered to participate.)

Q : Why should I consider participating in E-Verify?

E-Verify is currently the best means available for employers to electronically verify the employment eligibility of their newly hired employees. E-Verify virtually eliminates Social Security mismatch letters, improves the accuracy of wage and tax reporting, protects jobs for authorized U.S. workers, and helps U.S. employers maintain a legal workforce.

Q : How Do I Register for participation in E-Verify?

You can register for E-Verify at <https://www.vis-dhs.com/EmployerRegistration>, which provides instructions for completing the registration process. At the end of the registration process, you will be required to sign a Memorandum of Understanding (MOU) that provides the terms of agreement between you the employer, the SSA, and USCIS. An employee who has signatory authority for the employer can sign the MOU.

Q : After an employer registers, how does the program work?

Using an automated system, the program involves verification checks of SSA and DHS databases. The E-Verify MOU, User Manual and Tutorial contain instructions and other related materials on E-Verify procedures and requirements. Once the user has completed the tutorial, he or she may begin using the system to verify the employment eligibility of all newly hired employees.

Q : Can I verify the immigration status of a new hire that is not a U.S. citizen?

No. E-Verify verifies a new hire's employment eligibility, not his or her immigration status.

Q : What information is required to conduct an E-Verify initial verification?

After hiring a new employee and completing the Employment Eligibility Verification form (Form I-9), required for all new hires (regardless of E-Verify participation), the employer or agent must submit a query that includes information from sections 1 and 2 of the Form I-9, including:

- Employee's name and date of birth,
- Social Security Number (SSN),
- Citizenship status he or she attests to,
- A number or I-94 number, if applicable,
- Type of document provided on the Form I-9 to establish work authorization status, and
- Proof of identity and its expiration date, if applicable.

Response to the initial query is sent within seconds of submitting the query. Documents presented for Form I-9 identification only purposes (documents from "List B") to E-Verify employers must have a photograph.

If you would like to start receiving the FOCUS via e-mail please e-mail your information to jdunn@stoweassociates.com or fax this completed form to 770-936-2638.

E-Mail Address: _____

Company Name: _____