



# COMPLIANCE BULLETIN

## HIGHLIGHTS

- California employers must notify employees of any deadline to withdraw FSA funds prior to the end of the plan year, starting in 2020.
- This notice requirement appears to be directed at employees who terminate employment (or otherwise lose eligibility) during the plan year.
- This notice must be provided by two different forms.

## ERISA PREEMPTION

- ERISA may preempt this rule for health care FSAs sponsored by ERISA-covered employers.
- No official guidance or ruling has been released on this issue.
- Dependent care and adoption assistance FSAs are not subject to ERISA and can be subject to state law notice requirements.

**Provided By:**  
Creative Benefits, Inc.

## California Enacts Employer Notice Requirement for FSAs

Beginning in 2020, a [new California law](#) requires employers that sponsor flexible spending accounts (FSAs) to notify employees of any **deadline for withdrawing FSA funds before the end of the plan year**. This requirement applies to dependent care, health care and adoption assistance FSAs.

The new law appears to apply to employees who terminate employment (or otherwise lose FSA eligibility) during the plan year. As a general rule, employees who do not withdraw FSA funds by the plan's deadline forfeit any unused amounts.

Employers must provide this notice by **two different forms**, one of which may be electronic. Permissible methods of communication include email, text message, postal mail and in-person communication.

Although the law does not include a specific penalty for failing to provide the notice, it is possible that affected employees may pursue a refund of their unspent FSA funds.

## ACTION STEPS

Employers with FSAs should review their deadlines for withdrawing funds prior to the end of the plan year and prepare to start providing this notice in 2020. ERISA may preempt this notice requirement for health care FSAs, but there has been no official guidance on this point that would currently permit an exemption.

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