

LEGAL UPDATE

Temporary Special Rules for Health and Dependent Care FSAs

On Dec. 21, 2020, Congress passed the [Consolidated Appropriations Act of 2021](#), which is expected to be signed into law by President Donald Trump. The Act includes temporary special rules for health and dependent care flexible spending accounts (FSAs) that give employees additional time to use these funds.

Extended Periods

Because of the COVID-19 pandemic, employees may be more likely to have unused amounts in health or dependent care FSAs. For plan years ending in 2020 and 2021, the Act allows employers to:

- Permit employees to **carry over unused amounts** remaining in these FSAs to the next plan year.
- **Extend the grace period** to 12 months after the end of such plan year.
- Permit employees who **cease plan participation** during 2020 or 2021 to continue to receive reimbursements from unused amounts through the end of the plan year in which their participation ended.

The Act also includes a special carry forward rule for dependent care FSAs where the dependent aged out during the pandemic. For purposes of determining dependent care assistance that may be paid or reimbursed, the maximum age is increased from 13 to 14.

Change in Election Amounts

Employees can also elect to **prospectively modify** the amount of their FSA contributions for plan years ending in 2021, even if they have not experienced a change in status. However, the applicable dollar limitations will continue to apply.

Plan Amendments

Employers can retroactively adopt plan amendments incorporating these provisions.

Specific requirements must be met:

- The plan must be operated consistently with the amendment terms until the amendment is adopted.
- The amendment must be adopted by the last day of the first calendar year following the plan year in which it is effective.

Employers with health and dependent care FSAs may provide employees with additional time to use their funds in these accounts.

Provided to you by [Creative Benefits, Inc.](#)

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