Flexible Spending Arrangements (FSAs)

The chart below describes the otherwise applicable general rules for health and dependent care FSAs.

	Health FSA	Dependent Care FSA
What is it?	Tax-advantaged employer plan that reimburses employee medical expenses.	Tax-advantaged employer plan that reimburses employees for dependent care expenses.
What are some advantages to it?	• No federal income tax or employment tax on contributions. • Tax-free distributions for qualified medical expenses. • Employee can draw on the account for medical expenses before funds are placed in it.	• No federal income tax or employment tax on contributions. • Tax-free distributions for qualified dependent care expenses.
What expenses can it be used to pay?	Expenses **specified by the plan** that generally qualify for the medical and dental expenses deduction, but not traditional health insurance premiums.	Expenses that generally qualified for the child and dependent care expenses deduction, including nursery school and preschool expenses.
Which employees can have it?	Those enrolled in non-FSA group medical coverage and eligible under the rules of the plan, subject to the Section 105(h) and 125 nondiscrimination rules.	Generally all employees, subject to the Section 129 nondiscrimination rules.
Who can contribute to it?	Employers and employees.	Employers and employees.
How much can be contributed to it?	For plan years beginning in 2023, employees may contribute up to $3,050 ($2,850 for plan years beginning in 2022).	Generally up to: • $5,000 for individuals or married people filing taxes jointly; or • $2,500 for married people filing taxes separately.
Can employees carry over funds from year to year?	Generally no, but employers may: • Allow employees to carry over up to $610 in unused funds for plan years beginning in 2023 ($570 for 2022 plan years) to use in the following plan year; or • Provide a "grace period" of 2.5 months after the end of the plan year for employees to use the money in the account.	Generally, no.
Is it portable for the employee?	No.	No.
What requirements must an employer satisfy?	1. Have a written Plan Document. 2. Distribute a Summary Plan Description (SPD) within 90	1. Have a written Plan Document. 2. Notify eligible employees about the

	days of the employee becoming a plan participant. 3. Offer the health FSA as part of a cafeteria plan. 4. Offer employees traditional group health insurance. 5. If making contributions, meet the Section 105(h) and 125 nondiscrimination rules. 6. Comply with the rules on mid-year election changes. 7. Set the maximum benefit amount for each employee so that it does not exceed: ◦ Two times the employee's health FSA salary reduction election for the year; or ◦ If greater, $500 plus the amount of the employee's health FSA salary reduction election for the year. 8. Annually file IRS Form 720 and pay PCORI fees by July 31, if applicable.	plan and communicate its rules regarding eligible expenses. 3. Comply with the Section 129 nondiscrimination rules. 4. If offered as part of a cafeteria plan, comply with the rules on mid-year election changes. 5. Annually report the amount of dependent care benefits an employee receives in **box 10 of Form W-2**.
Can employers offer or contribute to it without also offering a group health plan?	No.	Yes.
Is it subject to COBRA?	Yes, but may be provided on a limited basis.	No.
Where can I learn more?	• IRS Publication 502 • IRS Publication 969 • DOL Guidance	• IRS Code Section 129 • IRS Publication 503

Temporary COVID-19 Rules - Expired: Due to the COVID-19 pandemic, the Consolidated Appropriations Act of 2021 and IRS Notice 2021-15 provided flexibility to employers offering health or dependent care FSAs, allowing employers to:

- Permit employees to carry over unused amounts from the 2020 and 2021 plan years;
- Extend the grace period for incurring claims for plan years ending in 2020 and 2021, up to 12 months;
- Adopt a special rule regarding post-termination reimbursements from health FSAs, which allows employers to 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;
- Provide a special claims period and carry forward rule for when a dependent "ages 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 years of age; and
- Allow additional mid-year election changes for plan years ending in 2021.