



Compliance Alert

California's New FSA Claims Submission Deadline Notice Requirement

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New California Law Requires FSA Notice of Claim Submission Deadline

California has enacted [AB 1554](#) requiring employers to notify an employee who participates in a FSA of any deadline to submit claims before the end of the plan year.

The law purports to apply to both dependent care FSAs and health FSAs. However, it is likely that the California state law will be found to be [preempted by ERISA](#) with respect to the health FSA as a state law that relates to an ERISA employee benefit plan. The dependent care FSA is not subject to ERISA, and therefore the law should have no obstacles to enforcement.

AB 1554 requires that employers provide notice by two different forms, one of which may be electronic. Therefore, at least one form of notification cannot be electronic.

The permitted methods of notice include (but are not limited to):

- Email
- Phone
- Text
- Mail
- In-person

By the new law's plain text, the notice requirement appears to only apply only to situations where an employee is subject to a claim submission deadline before the end of the plan year. Most FSAs permit participants to submit claims after the end of the plan year via a run-out period. Therefore, it appears that the notice would generally be required only in situations where an employee terminates employment mid-year, the employee loses eligibility for the FSA mid-year, or the FSA is terminated mid-year.

However, there is speculation in the industry based on the legislative history whether the notice requirement is actually intended to apply to any claims submission deadline—regardless of whether it occurs before the end of the plan year. As described below, the bill’s author takes this position.

Conversation with Assemblywoman Gonzalez’s Office Provides Initial Level of AB 1554 Information

AB 1554 is authored by California state Assemblywoman Lorena Gonzalez (D-San Diego).

In conjunction with [Elizabeth Loh, Director at Trucker Huss](#), we reached out to Assemblywoman Gonzalez’s office to discuss a number of the bill’s unclear provisions.

The following is based on our informal conversations with the author’s office:

Question: When does AB 1554 take effect?

Response: AB 1554 takes effect on Jan. 1, 2020.

Question: Are calendar plan year FSAs expected to provide these notices during the 2019 calendar plan year? If so, is it possible to provide the notices by the end of the run-out period?

Response: It is possible to provide the notices by the end of the run-out period. For instance, if the 2019 calendar plan year’s run-out period is March 31, 2020, it is okay as long as you provide the two notices before March 31, 2020.

The “before the end of the plan year” language is something we have been looking into possibly cleaning up in the future, since our intent was to ensure the notices are given out before the run-out period deadlines and the funds in the plan year expire.

Question: Are the notices required even where the plan does not provide for a mid-year claims submission deadline?

Response: Yes, the notices are required to be provided for all FSA participants for any deadline to withdraw funds. So if an employee is terminated mid year, then they should be given at least two different forms of notice of their new deadline (for instance, if they have 90 days after the date of termination, etc.). If the only deadline is the run-out period deadline, then they should receive notices for that.

Question: When is the general deadline to provide the notices?

Response: The bill does not specify an exact date or timeline of when to provide the notices. A reasonable amount of time should be sufficient, such as 30 days before the deadline.

Question: What are the potential penalties for failing to provide the notices?

Response: Potentially a labor code violation.

Question: Which state agency will have enforcement authority over AB 1554?

Response: This would fall under the jurisdiction of the Division of Labor Standards Enforcement.

Question: Will the relevant state agency provide additional regulatory or sub-regulatory guidance on how AB 1554 is intended to be implemented?

Response: I am not sure if they will. I have only been answering any interpretation or clarification questions that I have received.

Question: Will the relevant state agency provide a model form that employers can use to satisfy the notice requirement?

Response: I am not aware if they will provide a model.

Question: Can employers satisfy the requirement to provide two notices by providing different notices at different times but using the same distribution format each time (e.g., mail)?

Response: I believe employers would have to distribute the notices via two different forms. The idea behind this is, if for instance, employees receive an email and they both go to the spam folder or if the employee moves and does not receive both postal mail notifications, etc.

Question: Does Assemblywoman Gonzalez have a position on the ERISA preemption of AB 1554 as it applies to health FSAs?

Response: It could be subject to preemption, however, we do not know whether a court would rule that way or not.

More to come on this new California law as details emerge.

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