

Employer FICA Exemption in Danger

In January, the Congressional Joint Committee on Taxation, in response to the federal budget shortfall, issued a report proposing to eliminate the cafeteria plan FICA tax exemption in order to raise approximately \$164 billion over 10 years.



Because of the ongoing budget problem and Congress' inability to find budget solutions, the prospect of Congress attacking tax saving measures (important to businesses and taxpayers alike) is very real. Such action would increase taxes for employers and employees alike, increase the costs of health and other benefits, and result in an increase of uninsured Americans.

In response to the threat to the FICA tax exemption for cafeteria plans, certain coalitions and lobbying groups are working diligently to oppose any act of Congress against the FICA exemption. Prominent among those groups is the Employer Council for Flexible Compensation ("ECFC"), of which *Pro*Benefits is an active member and participant. ECFC has already taken significant action, including contacting the House of Representatives Ways and Means Committee and Senate Finance Committee on behalf of its members, expressing strong employer opposition to any attack on the FICA exemption. ECFC also leads the Coalition to Preserve Health Benefits, a joint effort with other associations to oppose any act of Congress that would threaten the FICA exemption or any other similar tax saving mechanism benefiting employers and employees.

*Pro*Benefits will continue to monitor the situation as well as participate in efforts to protect the FICA exemption, which is such an asset to *Pro*Benefits' valued clients.

If your company is interested in further information about how to show your support for the FICA exemption, please (1) visit www.ecfc.org for information about ECFC and its effort, or (2) contact Gary Knight or Jason Cogdill at *Pro*Benefits. And, of course, let your local members of Congress know where you stand!

Your Questions Answered

How do employee leaves of absence affect participation in a Flex Plan?

- During an FMLA leave, a participant may revoke his/her participation, but has a right to continue coverage.
- In the case of a regular leave of absence, the employer may terminate coverage. [*In this case, COBRA-qualifying employers must offer COBRA rights to the employee*]. The beginning of or return from unpaid leave constitutes a status change, allowing participants the opportunity to elect a change in coverage. If the participant declares a status change, coverage can be suspended during the leave. If a status change is not requested, coverage can continue.
- ***If coverage is continued, how are contributions paid during unpaid leave?***

In either type of leave, premiums may be:

- (1) Pre-paid on a pre-tax or after-tax basis;
- (2) Paid as due, on an after-tax basis; or
- (3) Reimbursed to the employer in arrears, either pre-tax or after-tax.

[Option (3) is the least common option, as employers do not know in advance whether employees will return to work after leave, and a consistent, effective way of offering coverage best serves the needs of the employer.]

It is important to treat leaves of absence with care and advance planning, to avoid violating IRS rules and to protect the interests of employer and employee.

For our online readers, click [here](#) for more information.

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