

# FALL RIVER EMPLOYEE BENEFITS



## SIMPLE Cafeteria Plans

The new healthcare reform law adds a new provision of particular interest to small employers. Simple cafeteria plans, established under Sec. 9022 of the Pension Protection and Affordable Care Act. In years beginning after Dec. 31, 2010, certain small employers' cafeteria plans can qualify as simple cafeteria plans and thus avoid the nondiscrimination requirements of a classic cafeteria plan under IRC Sec. 125(b).

Through the establishment of a simple cafeteria plan, without worrying about running afoul of the nondiscrimination requirements of a classic cafeteria plan, employers can retain potentially discriminatory benefits for highly compensated and key employees (subject to some restrictions relating to contributions, as discussed below) while allowing other employees to enjoy the benefits of a cafeteria plan.

An employer eligible to establish a simple cafeteria plan is any employer that, during either of the two preceding years, employed an average of 100 or fewer employees on business days.

If an employer has 100 or fewer employees for any year and establishes a simple cafeteria plan for that year, then it can be treated as meeting the requirement for any subsequent year even if the employer employs more than 100 employees in the subsequent year. However, this exception does not apply if the employer employs an average of 200 or more employees during the subsequent year.

This provision allows small but growing employers to continue to offer simple cafeteria plan benefits to employees without the concern of having to meet the discrimination requirements of a classic cafeteria plan. Without this exception, the establishment of simple cafeteria plans could create a disincentive to increased hiring.

## CONTRIBUTION REQUIREMENTS

Under the contribution requirements, a simple cafeteria plan must make a contribution to provide qualified benefits on behalf of each qualified employee, in an amount equal to:

- 🍁 a uniform percentage (not less than 2%) of the employee's compensation for the year, or
- 🍁 an amount not less than the lesser of:



- 6% of the employee's compensation for the plan year, or
- twice the amount of the salary reduction contributions of each qualified employee.

If the employer bases the satisfaction of the contribution requirements on the second option, it will not be in compliance if the rate of contributions to any salary reduction contribution of a highly compensated or key employee is greater than to the rate of contribution for any other employee.

For purposes of the contribution requirements, a salary reduction contribution is any amount contributed to the plan at the election of the employee and not includable in the employee's gross income under the Sec. 125 cafeteria plan provisions. The terms "highly compensated employee" and "key employee" retain their definitions under the classic cafeteria plan provisions. A "qualified employee" is any employee who is not a highly compensated or key employee.

## ELIGIBILITY & PARTICIPATION REQUIREMENTS

A simple cafeteria plan must also satisfy minimum eligibility and participation requirements. The requirements are met if all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate and if all employees have the same election rights under the plan.

An employer may elect to exclude from the plan employees who have not attained the age of 21 before the close of the plan year, who have less than one year of service with the employer as of any day during the plan year, who are covered under a collective bargaining agreement if there is evidence that the benefits covered under the plan were the subject of good faith bargaining between employee representatives and the employer or are nonresident aliens working outside the United States whose income did not come from a U.S. source.