



FSA Compliance Issues

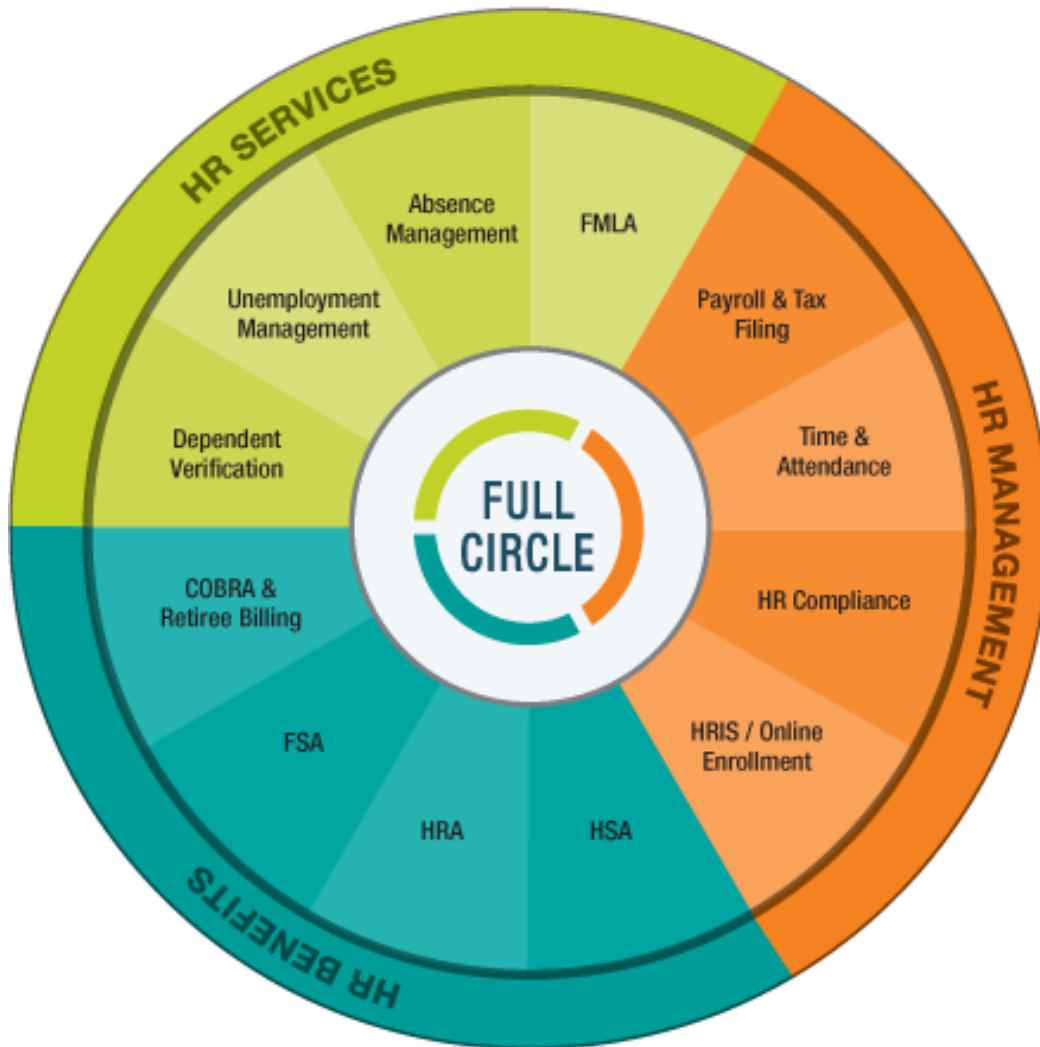
Presented by: Norbert F. Kugele & Kent D. Sparks



- HR Benefits
- HR Management
- HR Services

We're proud to offer a full-circle solution to your HR needs. BASIC offers collaboration, flexibility, stability, security, quality service and an experienced staff to meet your integrated HR, FMLA and Payroll needs.

HR Solutions Come Full Circle

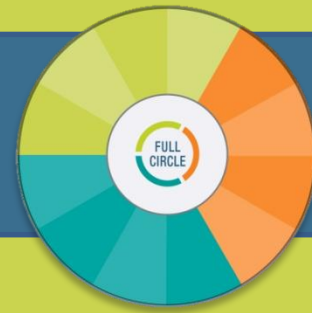


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FSA Basics

Types of FSAs



- **Two Main Types**
 - Health Care FSA
 - Dependent Care FSA
- **Others**



Health Care FSA



- **Tax Benefits**

- Employer
- Employee

- **Contribution Limit**

- \$2,550 per plan year (for 2016)



Health Care FSA



- **Qualified Medical Expenses**
 - Who decides?
 - Flexibility in design
 - Incurred v. Submitted
 - Run-Out Period



Health Care FSA



- **Claim Substantiation**
 - Burdensome, but necessary
 - Can it be avoided? Not really

Health Care FSA



- **Debit Cards**
 - Employer's still responsible for compliance
 - Comes with restrictions



Dependent Care FSA



- **Contribution Limit**
 - Generally, \$5,000 per plan year (for 2016)
- **Qualifying Individuals**
- **Qualifying Expenses**



FSA's Generally



- **Uniform Availability**
 - Does not apply to Dependent Care FSAs
- **Use-it-or-Lose-it Rule**
 - Generally forfeit unused amounts
- **Experience Gains**

FSA Issues



- **Grace Period**

- Up to 2½ months



- **Carryover Amount**

- Up to \$500
- Impact on yearly contribution limit?

- **It's one or the other—not both**



ACA Issues



- **Objective: need to avoid ACA mandates.**
 - \$100 penalty per participant per day of violation.
- **FSA must be:**
 - “excepted benefit”; or
 - Integrated with medical coverage.



- **“Excepted benefit” if:**
 - Eligibility same as for medical plan coverage; and
 - Employer contributions are no more than:
 - \$1 for \$1 match; or
 - \$500.





- **Integrated FSA**

- Must offer group medical plan.
- Employee enrolled in group medical plan (even if not employer's).
- Annual opportunity to permanently opt out of or waive future reimbursements from FSA.



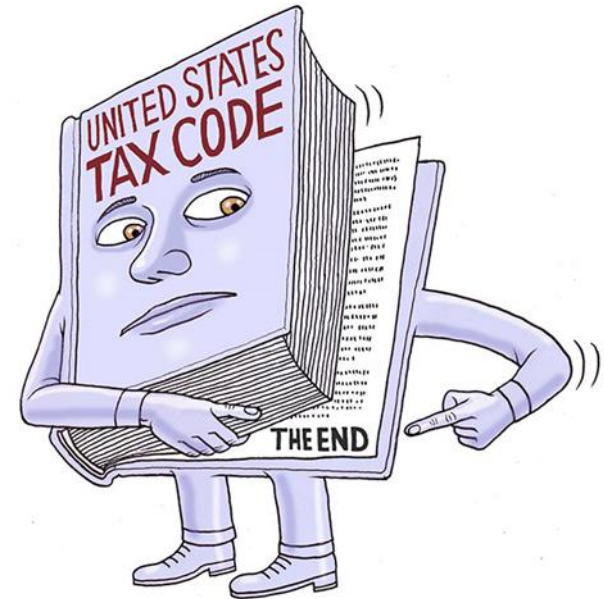
Mid-Year Election Changes

Mid-Year Election Changes



- **Tax Code Section 125**

- Irrevocable election.
- Exceptions:
 - Mid-year status events
 - FMLA leave
 - Dependent Care special rules
- Possibly to correct a mistake?





- **Health and Dependent Care FSAs**

- Change in Status Events
 - Marital status
 - Number of dependents
 - Employment status
 - Dependent's eligibility
- Subject to consistency rule



Mid-Year Election Changes



- **Dependent Care FSAs only:**
 - Change in cost (except for relatives)
 - Change in provider
 - Change in hours of dependent care
 - Change in eligibility for coverage under another employer's plan



Mid-Year Election Changes



- **Health FSAs only:**
 - Qualified Medical Child Support Order
 - Change in Medicare/Medicaid Entitlement



Mid-Year Election Changes



- **FMLA and health FSAs**
 - Employer may allow employee to revoke coverage during FMLA leave.
 - FSA coverage upon return from FMLA leave:
 - Employer option 1: required reinstatement of coverage (if also required for non-FMLA leave)
 - Employer option 2: allow employee to elect reinstatement in FSA:
 - Coverage upon reinstatement:
 - Same coverage amount, with increased contribution amount
 - Same contribution amount, but decreased coverage amount
- **But look at plan document for contrary provisions**

Mid-Year Election Changes



- **USERRA and Health FSAs**
 - Upon reemployment after military leave, right to reinstatement in benefits.
 - No explicit rules
 - Allow new elections if permit for employees returning from other leaves.





HSA and HRA

FSA and HSA



- **Is having both Health Care FSA and HSA possible?**
 - Yes! But must carefully structure
- **Structuring your Health Care FSA**
 - General Purpose
 - Limited Purpose
 - Post-Deductible



- **Coordination issues with HRAs:**
 - Can't allow employees to double-dip on reimbursements.
 - Employee must certify that:
 - Expense has not been reimbursement under any other coverage
 - Will not seek reimbursement under any other coverage
 - Ordering rules in HRA and Health FSA plan documents?



COBRA Issues

COBRA Issues



- **Health FSAs are subject to COBRA**
- **“Excepted Benefit” FSAs have limited COBRA rights**
 - No offer if FSA is “overspent”
 - If underspent, coverage only extends through end of plan year

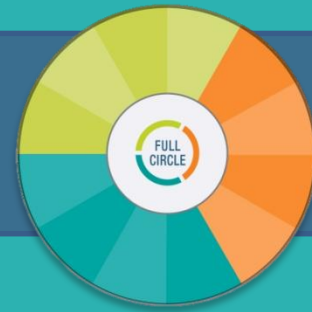


- **Each qualified beneficiary has an independent right to elect COBRA**
 - Employee with family of four terminates employment: one shared account, or separate accounts?
 - Spouse losing coverage because of divorce: separate account?
 - Premiums?

COBRA Issues



- **Grace periods apply**
 - 2-1/2 additional months to incur costs
- **\$500 carryover**
 - Same carryover rights as non-COBRA FSA beneficiaries.



FSA

Nondiscrimination

FSA Nondiscrimination



- **Health FSA (§ 105) tests:**
 - Section 105 eligibility tests
 - 70% test
 - 80%/70%
 - Nondiscriminatory classification test
 - Section 105 benefits test



- **Dependent Care FSA (§ 129) tests:**
 - nondiscriminatory classification eligibility test
 - contributions and benefits test
 - More than 5% owners concentration test
 - 55% average benefits test

FSA Nondiscrimination



- **Also included in cafeteria plan (§ 125) tests:**
 - Nondiscriminatory classification eligibility test
 - Contributions and benefits test
 - Key employee concentration test



Questions



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Contact the Presenters



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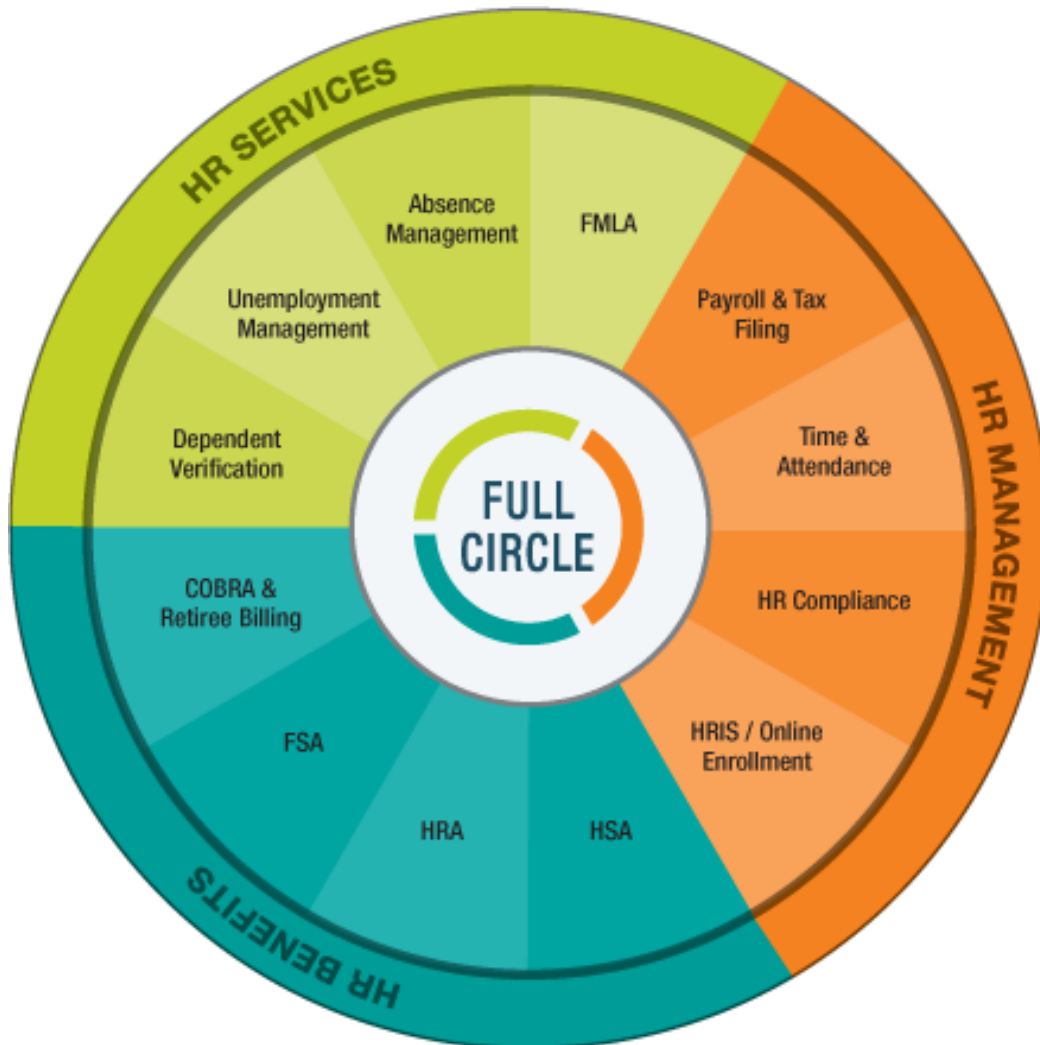
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