FLEX

POP and Wrap

Frequently Asked Questions

This FAQ provides clear answers to common questions about Premium Only Plans (POPs) and ERISA Wrap Documents. Whether you're looking to understand compliance requirements, administrative processes, or employer responsibilities, this resource is designed to provide the key information you need.

1. What is IRS Code Section 125?

IRS Code Section 125 is the part of the IRS Code that lets employees pay for their share of certain benefit elections, such as health, dental, and vision insurance, with pre-tax dollars.

2. What is a Cafeteria Plan?

Cafeteria Plans are employee benefit programs that let employees choose from a variety of benefits. For example, an employer may offer employees a choice of 3 different health insurance plans, 2 different dental insurance plans, voluntary benefits, such as group term life insurance, vision insurance, disability insurance, Health FSAs, Dependent Care FSAs, HSAs, etc.

The name Cafeteria Plan is really nothing more than a nickname. The nickname was created because it's said that employers offer a "menu" of benefits that employees can select from. It's comparable to going to a cafeteria and selecting what you want to eat from a variety of food options.

Cafeteria Plans are synonymous with IRS Code Section 125 as the benefits offered through a Cafeteria Plan can be paid with pre-tax dollars. Cafeteria Plans are sometimes referred to as Section 125 Plans.

3. What is a POP?

A POP, or Premium-only-Plan, is a type of Cafeteria Plan where the only benefits offered by the employer are those of insurance plans. Other types of benefits, like Health FSAs and Dependent Care FSAs, are not available to be offered through a POP. You can think of a POP as a "limited menu" Cafeteria Plan.

4. What is needed to establish a POP?

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6. What does the employer do with the POP documents?

The employer should retain the formal plan document for their records and provide it to employees within 30 days of request. A copy of the summary plan document should be provided to employees prior to the start of the plan year (or prior to the first day the employee is a participant in the POP, if later).

7. Can a POP have a retroactive effective date?

The IRS does not permit retroactive effective dates. An employer implementing a POP for the first time would be doing so prospectively.

8. Do the POP documents have to be filed with the IRS?

No; however, employers should be prepared to provide copies to the IRS if ever requested in an audit or for other reasons.

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9. What happens if an employer does not have a POP, but they are withholding employee elections for insurance benefits with pre-tax dollars?

The employer would be out of compliance with the IRS Code Section 125 rules. If discovered by the IRS, the IRS may require a back payment of taxes and penalties.

10. Who can sponsor or offer a POP?

Any employer can sponsor or offer a POP.

11. Who can participate in a POP?

Only common law employees may participate in a POP. Former common law employees may also participate in a POP (at the option of the employer) to the extent the former employees are still receiving wages for which premium elections can be withheld.

Spouses and children of common law employees may not directly participate in a POP; however, they may participate indirectly in a POP if the employee elects to participate in the POP and adds the spouse and/or children to his/her coverage as dependents.

12. Who cannot participate in a POP?

The following are examples of individuals who cannot participate in a POP:

- Self-employed business owners, such as:
  - Sole proprietors
  - Partners in a partnership
  - More-than-2% owners of an S-Corp (including their spouses, children, grandchildren, and parents)
- Non-employee board members or outside directors
- Independent contractors

Owners of a C-Corp are eligible to participate since they are taxed differently than other types of business owners.

13. What are the benefits of a POP?

For employees, they save on federal income taxes, state income taxes, Medicare taxes, and Social Security taxes.

For employers, they reduce their Medicare and Social Security matching tax obligation.

14. Does an employer need a POP in place if they are paying 100% of all premiums and there are no employee contributions for any benefits?

No. A POP is only required when employees are making pre-tax payroll reduction contributions for one or more of the benefits available.

15. Which benefits may be offered under a POP?

- Group health insurance
- Group dental insurance
- Group vision insurance
- COBRA insurance premiums
- Group term life insurance (up to $50,000 in coverage)*
- Group short-term and long-term disability insurance**
- Various supplemental or voluntary insurance programs***

*Premiums for group term life insurance for employees with face amounts up to $50,000 may be paid with pre-tax dollars. Face amounts more than $50,000 must be paid with post-tax dollars.

Group term life insurance issued in the name of an employee's spouse or child may only be paid with pre-tax dollars for face amounts up to $2,000. Face amounts more than $2,000 must be paid with post-tax dollars.

**Disability claim payments are taxable if premiums are paid with pre-tax dollars. As a best practice, it is recommended that disability insurance premiums are paid with post-tax dollars.

***Indemnity style insurance plans (e.g., accident plans, fixed indemnity plans, hospital indemnity plans, cancer plans, critical illness plans) that make cash payments upon certain events may be partially taxable if premiums are paid with pre-tax dollars. Cash payments made by the insurance plan in excess of the cost of medical care are taxable when premiums are paid with pre-tax dollars. As a best practice, it is recommended that indemnity style insurance premiums are paid with post-tax dollars.

16. Which benefits cannot be offered through a POP?

Some examples of plans that cannot be offered or paid through a POP include:

- Individual Health Insurance Marketplace plans
- Short-term medical insurance
- Long-term Care insurance
- Pet insurance

17. Is a POP subject to ERISA?

No; however, the underlying insurance plans that are offered to employees typically are subject to ERISA.

18. Is a POP subject to Form 5500 reporting?

No; however, the underlying insurance plans may be subject to Form 5500 reporting.

19. When can employees change the elections they make in a POP?

Employees are generally locked into the benefits they initially elect under a POP for the entire plan year; however, there are several circumstances that allow employees to make certain changes. This may include adding coverage that was originally waived, dropping coverage that was originally elected, or adding or removing dependents.

These are the qualifying events that allow election changes for a POP.

- Change in status (e.g., change in marital status, change in the number of dependents, change in employment status, change in residence)
- Insignificant premium cost changes
- FMLA leaves of absence
- Certain reductions in hours
- Health Insurance Marketplace enrollments

It should also be noted that 1) employers do not have to allow for all these qualifying events, and 2) insurance carrier requirements may not necessarily follow POP qualifying event rules. It's important to confirm that both a change can be made under the POP rules and insurance carrier rules.

20. Who is considered a highly compensated employee?

A highly compensated employee is an employee who meets one or more of the following criteria:

- The employee is an officer of the company.
- The employee is a shareholder owning more than 5% of the of the voting power or value of stock of the employer.
- The employee is highly compensated. For 2024, an employee is highly compensated if they earned $150,000 in the preceding plan year. For 2025, an employee is highly compensated if they earned $155,000 in the preceding plan year.
- Any employee who is a spouse or dependent of the above-mentioned categories.

A POP must pass the Eligibility non-discrimination test. Details about that test can be found here:

https://www.flexiblebenefit.com/blog/cafeteria-plan-eligibility-non-discrimination-test

21. How often does non-discrimination testing have to be performed?

The IRS rules explain that a POP must be non-discriminatory throughout the plan year. As a best practice, employers may want to perform the non-discrimination testing before the start of the plan year, during the middle of the plan year, and at the conclusion of the plan year.

22.What happens if the non-discrimination testing is failed?

Highly compensated employees lose their ability to participate in the POP (meaning their portion of contributions for insurance benefits cannot be withheld pre-tax from their paycheck). There is no consequence to non-highly compensated employees participating in the POP.

23. Can an HSA be offered under a POP?

Yes; however, this opens up additional non-discrimination testing that applies more broadly to Cafeteria Plans. In addition to the Eligibility Test, employers will have to pass a Contributions and Benefits Test and a Key Employee Concentration Test. Details about these tests can be found here:

https://www.flexiblebenefit.com/blog/cafeteria-plan-contributions-benefits-non-discrimination-test

https://www.flexiblebenefit.com/blog/cafeteria-plan-key-employee-concentration-non-discrimination-test

24. What is a Wrap Document?

The Employee Retirement Income Security Act of 1974 (ERISA), a law that is regulated by the Department of Labor (DOL), requires employers who offer health and welfare benefits to maintain and distribute a Summary Plan Description (SPD) to employees which includes certain written disclosures and explains to employees their rights under the plan(s).

Plan documents provided by insurance carriers and benefit administrators will help fulfill some of the written disclosures, but it typically will not include all required disclosures. The onus is on the employer (plan sponsor) to fill the gaps so that all required disclosures are made. Employers will often have a separate written document prepared to fill these gaps. This document, nicknamed a Wrap Document, is what is used to fill the gaps. It is called a Wrap Document because it is said to “wrap around” all health and welfare benefits offered by the employer.

25. What does the ERISA law require to be disclosed in writing?

- Name of the plan or the plan’ s common name.
- Name and address of the plan sponsor.
- Name, address, and phone number of the plan administrator.
- Plan year (which may be different than the policy year).
- Plan number (as defined in the Form 5500 reporting rules).
- Employer identification number (EIN), also known as the Tax ID number or (TIN).
- Type of welfare plan (e.g., health, life, disability).
- How the plan is administered (e.g., self-administered, insured, TPA).
- Eligibility requirements for participation.
- Name and contact information of the Agent for Service of Legal Process.
- COBRA statement of rights.
- Circumstances that could result in the disqualification, ineligibility, denial, loss, forfeiture, suspension, offset, reduction, or recovery of any benefit.
- FMLA procedures.
- Source of premium contributions (e.g., employer and employee contributions).
- Schedule of premium contributions.
- Funding medium (e.g., employer general assets or trust).
- Procedures for qualified medical child support orders (QMSCO).
- A statement indicating all plan documents will be available free of charge after an adverse benefit determination.
- Statement of ERISA rights.
- If the plan is collectively bargained, details on where a copy of the agreement can be found.
- HIPAA special enrollment rights and privacy procedures.
- Newborns’ and Mothers’ Health Protection Act disclosure.
- Women’ s Health and Cancer Rights Act disclosure.
- CHIPRA special enrollment rights disclosure.
- Terms under which the employer may amend or terminate the plan.

26. How does a Wrap Document simplify Form 5500 reporting?

Employers subject to Form 5500 reporting will generally save time and/or money by having a Wrap Document prepared. When a Wrap Document is in place, the DOL treats all the benefits covered by the Wrap Document as a single, master plan with sub-component benefits.

This means that just a single Form 5500 report needs to be filed for all benefits covered by the Wrap Document with a supporting Schedule A for each applicable benefit. This alleviates the requirement of filing a separate Form 5500 report for each benefit.

27. When does the Wrap Document need to be distributed to employees?

- Within 90 days of an employee first being covered by a plan
- Within 120 days of a newly established plan
- Every 5 years when the document has material changes
- Every 10 years when the document doesn't have material changes
- Within 30 days of request

As a best practice, it is recommended to provide a copy of the Wrap Document when an employee is first eligible to participate in benefits, and at each open enrollment thereafter.

28. Can a Wrap Document have a retroactive effective date?

It is certainly the safer option to establish a Wrap Document prospectively; however, some facts and circumstances may warrant a retroactive effective date. Employers should be aware that if they adopt a Wrap Document retroactively, it may impose retroactive requirements (e.g., retroactive Form 5500 reporting obligations may apply).

29. Does a copy of the Wrap Document need to be filed with the DOL and/or submitted with the Form 5500 Reporting?

No. Employers should be prepared to provide a copy to the DOL if requested in an audit or for other reasons.

30. What are the penalties for not having a Wrap Document?

The DOL can impose financial penalties on employers for failing to timely provide employees with a copy of the Wrap Document or failing to timely provide the DOL with a copy of the Wrap Document upon request.

Additionally, the more serious consequence, is that employees have the right to file a lawsuit against employers. If an employer did not provide full written disclosures to employees in a Wrap Document, the likelihood that an employee is successful with their lawsuit significantly increases.

31. Can the POP and Wrap Documents be distributed via email or posted to an internal website?

The simple answer is, yes, for employees who regularly use a computer as part of their job. For employees who do not regularly use a computer as part of their job, permission should be obtained to distribute the documents electronically.