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Julie assists with a variety of compliance issues related to employee benefits and the ACA, ERISA and other federal and state regulations.

Employee Benefits – Question of the Month

February 2019

Q: We have a former employee who is seeking reimbursement under our dependent care FSA for expenses that were incurred after he left our employment. Our FSA administrator denied the claims, and the employee is not happy.

I looked at our cafeteria plan document, and it does say that dependent care expenses will only be reimbursed if incurred prior to termination of employment. While we don't want to keep anyone's money unfairly, we also want to make sure we aren't jeopardizing our plan. What are our options?

A: It looks like you are thinking about all the right things and just need a little help getting across the finish line.

The best first step is always to consult your cafeteria plan document. While most cafeteria plans prohibit reimbursement of dependent care expenses that were incurred after an employee leaves the company, it is possible to design a plan that allows those expenses through the end of the current plan year.

If, as you say, your cafeteria plan does not allow reimbursement of the expenses, it may still be worthwhile to discuss this with your attorney. We have heard several benefits attorneys opine that there may be a relatively low risk to authorizing the payment of claims in these types of situations. After all, employees are a lot less likely to complain to the DOL about you reimbursing their expenses improperly than about you denying claims their claims properly. However, this is ultimately a call that you will have to make in consultation with your attorney.

If you are interested in modifying your plan to allow reimbursement of expenses incurred after termination, I would recommend discussing it first with your FSA administrator to see if they have any insights into the practicality of that approach. In general, dependent care expenses may be reimbursed through an FSA only if they were necessary for the individual to work or look for work. For employees that no longer work for you, it may be administratively more difficult to verify whether dependent care expenses were necessary for the individual to look for other work. Your FSA administrator may have a better idea of whether such concerns outweigh your desire to allow the expenses going forward.

Feel free to contact me if you have any additional questions at julie@millercares.com.

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