

The Internal Revenue Code requires that cafeteria plans not discriminate in favor of highly compensated or key employees (defined below). The plan must pass three tests to show it is nondiscriminatory. These tests are (i) the eligibility test, (ii) the contributions and benefits test, and (iii) the concentration test.

## Eligibility Test

- Designed to ensure that a sufficient number of non-highly compensated employees benefit under the plan.
- Basically, the plan cannot discriminate (in favor of highly compensated employees) as to eligibility.
- Waiting periods (no longer than 3 years) and entry dates should be uniform for all employees.

## Contribution and Benefits Test

- Designed to make sure that contributions and benefits are available on a non-discriminatory basis.
- If the employer contributes the same amount for each employee and the same benefits are available for each employee, the plan should satisfy this test.

## Concentration Test

- Designed to ensure that nontaxable benefits provided to key employees do not exceed 25% of the total benefits provided under the plan.
- This includes both employee and employer premium payments and pre-tax deferrals flexible spending or dependent care reimbursement accounts.

For purposes of Section 125 nondiscrimination testing, a “highly compensated employee” is an officer, a shareholder owning more than 5% of the employer during either the current or preceding year, or an employee earning more than a specified threshold established each year by the IRS. Spouses and dependents of any of the foregoing are also included.

For purposes of Section 125 nondiscrimination testing, a “key employee” includes any officer expected to have compensation in excess of a threshold established each year by the IRS, a more than 5% owner, or a more than 1% owner expected to have annual compensation in excess of \$150,000 during the current year.

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Plan Year: \_\_\_\_\_ Company Name: \_\_\_\_\_

No. of Eligible Employees: \_\_\_\_\_ Company Officer and Title: \_\_\_\_\_

Highly Compensated / Key Employees Annual Non-tax Premium			
Non-tax Medical \$	+	Non-tax Supplemental \$	= Total Non-tax (1) \$
All Other Employees Annual Non-tax Premium			
Non-tax Medical \$	+	Non-tax Supplemental \$	= Total Non-tax \$
<b>Total Annual Non-tax Premium for All Employees (2)</b>			\$
<b>(1)</b> Key Employees Non-tax Benefits \$	÷	<b>(2)</b> All Employees Non-tax Benefits \$	= % of Non-tax Benefits to Key Employees %