

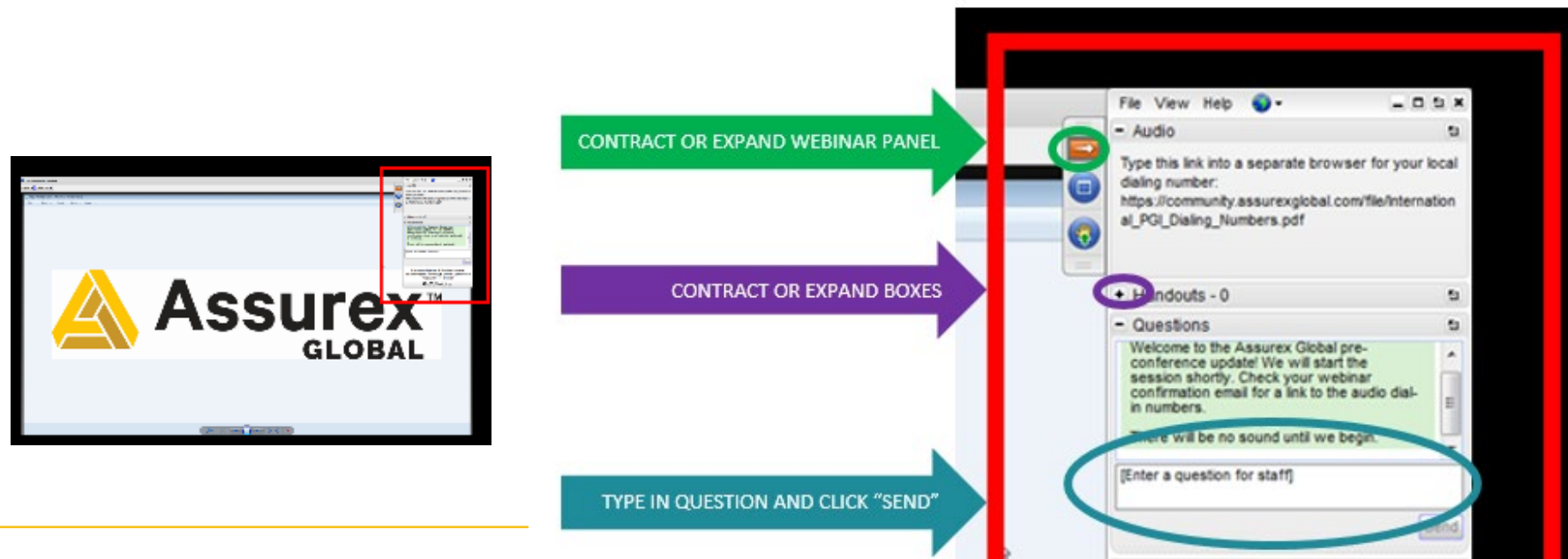
2021

Dependent Care Assistance Programs

Presented by Benefit Comply

Dependent Care Assistance Programs

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



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Agenda

- Contributions
- Eligible Expenses
- COVID-19 Relief

Contributions

Contributions

- Limit
 - Lesser of
 - \$5,000 for single individuals or married individuals filing joint tax returns (\$2,500 for married individuals filing separately); and
 - The earned income of the employee/spouse
 - Employer and Employee Contributions
 - Calendar year basis
- Timing
 - Not subject to uniform availability
 - Use-it or Lose-it
 - 2-½ month grace period
 - No carryover
 - Spend-down provision if in plan document
 - **COVID-19 relief discussed later**
- Report in Box 10 Form W-2

Election Changes

- Permitted Changes
 - Change in cost or coverage of childcare provider
 - Other Section 125 permitted election changes that affect the employee's eligible DCAP expenses
 - change in employee's legal marital status (gain or lose a spouse);
 - change in number of dependents;
 - change in employment status for employee, spouse or dependent that affects eligibility;
 - dependent satisfies (or ceases to satisfy) eligibility requirements;
 - change in residence; and
 - commencement or termination of adoption proceedings
 - COVID-19 relief discussed later

Election Changes

- **Example 1:** Ross elected \$5,000 through his employer's DCAP in January. In April, Ross and his wife Anita get divorced. Anita and Ross's child move out of Ross's house. May Ross make a midyear pre-tax election change to terminate his DCAP contributions?
- **Yes.** Since Ross's child will no longer be living with him, Ross will no longer have any eligible DCAP expenses. Therefore, Ross may make a midyear pre-tax election change to terminate his DCAP contributions.
- **Example 2:** Tara elected to contribute \$4,000 to her DCAP in January through her employer. In March, Tara got word that a spot opened for her son in a daycare much closer to her house. However, the new daycare is more expensive than Tara's current daycare. May Tara make a midyear pre-tax election change to increase her DCAP contributions?
- **Yes.** Tara is able to increase her DCAP contributions due to the increased cost of the new daycare.

Nondiscrimination

§129 Discrimination Testing

- Prohibits from discriminating in favor of highly compensated or key employees
 - Offering more generous eligibility rules, benefits or contributions
- Recommended that employers run §129 discrimination testing annually
- Eligibility and utilization tested
 - Most common plan that fails nondiscrimination testing
- Discriminatory plans trigger taxable income for the highly compensated and key employees

Eligible Expenses

Eligible Expenses

- Overview
 - Not eligible if the expense may also be claimed under the Dependent Care Tax Credit,
 - Must have been incurred during the period of coverage, and
 - Adequate claims substantiation must be provided by the participant and by an independent third party for each reimbursement
- Qualifying Individual (same principal abode for more than one-half of taxable year)
 - Dependent who has not attained age 13; **COVID-19 relief discussed later**
 - Dependent who is physically or mentally incapable of caring for himself or herself; or
 - Spouse who is physically or mentally incapable of caring for himself or herself
- Gainfully Employed
 - Full-time or part-time
 - If part-time - eligible expenses only for working days
 - Unless required to pay for a period that includes non-working days
 - Care acquired for personal reasons not eligible

Examples

- **Example 1:** June is gainfully employed and has her 18-month old daughter in daycare. June has prepaid for care in March that will not be provided until April. May she submit this expense for reimbursement from her employer's DCAP?
- **No.** Expenses must have been incurred in order to be reimbursed. Employees may not submit expenses for reimbursement until they've been received – even if they've paid for them.
- **Example 2:** Alberto and his spouse are both gainfully employed and have their son in daycare during the workweek. Occasionally, Alberto is asked to work in the evenings and his spouse cannot provide childcare due to other personal commitments. Can Alberto submit daycare expenses for his son for those evenings?
- **No.** Because the expense doesn't allow Alberto and his spouse to be gainfully employed, it is not eligible for reimbursement.

Eligible Expenses

- Eligible Care Arrangement
 - Primary purpose is to ensure the individual's well-being and protection
 - Educational programs (tutoring, music lessons, etc.) not reimbursable
 - Even if the employee would have had to procure other care had it not been for the educational program
 - Limited exception for certain summer day camps
 - Not eligible if provided by...
 - Tax dependent of the employee
 - Employee's child under the age of 19
 - Employee's spouse
 - Other parent who is not the employee's spouse
 - Examples
 - Day-care centers
 - In-home care (such as a nanny or au pair)
 - Custodial care
 - In some cases, backup/ emergency care

COVID-19 Relief

Review - IRS Notice 2020-29 – All Changes Optional

- Increased Flexibility in Permitted Mid-year Election Changes
 - Revoke an election, make a new election, or decrease or increase an existing election regarding a dependent care assistance program on a prospective basis through December 31, 2020
- Extended Claims Periods
 - Permit employees to apply unused amounts remaining as of the end of a grace period ending in 2020, or a plan year ending in 2020, to pay or reimburse expenses incurred through December 31, 2020
- Released mid-May applies retroactively to January 1, 2020
- Employers required to notify plan participants and make plan amendments
 - Plan amendments required by December 31, 2021, if necessary

COVID-19 Relief Legislation – All Changes Optional

- Special Rule for DCAP Participants with Dependents Who Age Out
 - DCAP typically can only reimburse expenses related to dependents under 13
 - Temporary rule permits expenses for under 14 under the following circumstances:
 - The employee elected to participate in a DCAP plan that had a regular enrollment period on or before January 31, 2020 (e.g., plan years that began 1/1/2020); and
 - A dependent child reached the age 13 during that plan year or the next plan year if there are unused expenses that are carried over
- Election Changes
 - Prospective changes to HFSA and DCAPs only
 - For any plan years ending in 2021, even without a recognized election change event
 - This would include prospectively reducing an existing election to \$0
 - Employers may want to consider permitting election changes especially considering potential confusion regarding how carryovers and grace periods affect annual maximums
 - Amendment required by 12/31/2022

COVID-19 Relief Legislation – All Changes Optional

- Carryovers
 - HFSA: Increase from \$550 carryover limit
 - Previously not permitted for DCAPs at all
 - Participants may be allowed to carry over their entire unused balance for plan years ending in 2020 or 2021
- Extended Grace Periods
 - Current rules allow a grace period of only up to 2 ½ months for both HFSA and DCAP
 - Grace period of up to 12 months for plan years ending in 2020 or 2021
- CAUTION
 - Unlike Health FSAs, DCAP exclusions are based on amounts reimbursed within a year as opposed to amounts contributed. The reimbursement amount has not been increased. Unclear at this point how this will affect annual limits.
- Amendments
 - Required by last day of plan year following the plan year during which the change is permitted

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