

EMPLOYEE BENEFITS

2023 FSA/HRA/HSA Comparison

	Health FSAs	HRAs	HSAs
IRS Tax Code Section	<u>Internal Revenue Code §125</u>	<u>Internal Revenue Code §105/ IRS Notice 2002-45</u>	<u>Internal Revenue Code §223</u>
Also Known As	Health Flexible Spending Account	Health Reimbursement Arrangement	Health Savings Account
Who is eligible?	<p>Any common-law employee, subject to employer plan design exclusions.*</p> <p>Note: Greater than 2% shareholders of S Corp and family members, LLC members, partners in a partnership and sole proprietors are NOT eligible.</p> <p>*As noted below, eligibility is typically limited to employees eligible for the employer’s medical plan.</p>	<p>Any common-law employee, subject to employer plan design exclusions.</p> <p>Note: Greater than 2% shareholders of S Corp and family members, LLC members, partners in a partnership and sole proprietors are NOT eligible for tax-favored treatment.</p>	<p>Any individual covered under a High Deductible Health Plan (HDHP) as defined in Code §223 who is not entitled to Medicare and is not claimed as someone else’s tax dependent may contribute to an HSA. With certain exceptions, the individual cannot have any other non-HDHP coverage.</p>
Can you fund the account through pre-tax payroll deductions?	Yes, through a Section 125 cafeteria plan.	N/A. Employer-only contributions allowed.	Yes, through a Section 125 cafeteria plan.

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Can you roll over unused amounts from year to year?

Generally, no. However, at the plan sponsor’s option, plans may allow for up to a \$610 carryover* (as indexed for inflation) of unspent account balances from the 2023 plan year to the 2024 plan year.

*Carryover provisions cannot apply to plans that have a grace period that allow expenses to be incurred after the close of the plan year.

Yes.

Yes.

Do you need to have a specific health plan to be eligible?

If the FSA qualifies as an excepted benefit, there is no need for the employee to be enrolled in other health coverage.

However, to qualify as an excepted benefit (not subject to ACA prohibition on lifetime or annual limits), only employees eligible for the employer’s major medical plan may be eligible to participate in the FSA.

No, unless the employer ties eligibility to an employer-sponsored health plan by design. However, to constitute an ACA-excepted benefit, the HRA must be integrated with a group health plan sponsored by the employer or another employer (i.e., the employee must be enrolled in that other group health plan), or the employee must have individual health insurance or Medicare in the case of an Individual Coverage HRA (ICHRA).

Yes. An HDHP with a minimum deductible of **\$1,500** self only coverage and **\$3,000** family coverage with no first dollar coverage except dental, vision and preventive care per [Code §223](#). When the HDHP includes an embedded deductible for participants with family coverage, no plan benefit (other than for preventive care or other permitted coverage) may be available until one or more covered family members has satisfied the full minimum annual family deductible.

Maximum out-of-pocket limits: **\$7,500** self-only and **\$15,000** family. For family contracts, the maximum out-of-pocket limit for each covered individual can be no greater than **\$9,100 to comply with the ACA cost sharing limit.**

HDHP minimum annual deductible and out-of-pocket limits apply based on the plan year.

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What are the plan limits?

The employer sets the plan’s limit, up to the maximum annual contribution limit set by the IRS. The account is funded through salary reductions from payroll withheld equally over the plan year. It may also be funded by employer credits. The entire election amount is available on the first day of the plan year.

Effective 1/1/2023, the maximum annual limit on salary reduction contributions to a health FSA is **\$3,050** per plan year.

The employer sets the plan limit. Account may be funded upfront with the entire amount available for reimbursement or pro-rata (i.e., per payroll, monthly, etc.), and reimbursement is based on the account balance.

Maximum of **\$3,850** for self-only coverage and **\$7,750** for family family coverage (indexed annually) without regard to health plan deductible for individuals who are eligible for the entire year. The full annual maximum is also available, regardless of the number of months the individual is HSA eligible, so long as the participant is HSA eligible on December 1 and remains HSA eligible for the following calendar year. Otherwise, an individual is eligible to contribute a pro-rata share of the HSA maximum annual limit in proportion to the number of months the individual is eligible to contribute to their HSA during the calendar year. Excess contributions are subject to a 6% excise tax. Individuals are entitled to an additional catch-up contribution (in excess of their original HSA contribution limit) of \$1,000 if over the age of 55 by the end of the tax year.



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What medical expenses are eligible for reimbursement?

Subject to employer-designed limitations, unreimbursed [Code §213\(d\)](#) medical expenses incurred during the coverage period for self, spouse and children who have not reached age 27 by the end of the tax year. Cannot reimburse insurance premiums or long-term care expenses.

Subject to design limitations, unreimbursed [Code §213\(d\)](#) medical expenses incurred during the coverage period for self, spouse and children who have not reached age 27 by the end of the tax year are eligible for reimbursement. Eligible expenses include premiums for eligible health insurance and long-term care insurance, subject to employer-designed limitations.

Unreimbursed [Code §213\(d\)](#) medical expenses of account holder, account holder's spouse and eligible tax dependents are eligible for reimbursement. Expense must be incurred after HSA is established. Eligible expense reimbursements include COBRA premiums, long-term care insurance, health insurance while receiving unemployment compensation, or if 65 or older, health insurance other than a Medicare supplemental policy.

Can you cash out balances for non-medical expenses?

No.

No.

Yes, but such amounts are includable as income and are subject to a 20% excise tax until age 65. Certain exceptions may apply.

Are elections irrevocable if the account is funded through pre-tax payroll deductions in a Section 125 plan?

Yes; however, election changes are permitted for qualifying status change events (new election must be consistent with, and coincide with, the life event).

N/A; no employee funding permitted.

No, Section 125 irrevocability rules do not apply to HSA's funded pre-tax through a Section 125 plan since HSA eligibility is determined prospectively on a month-to-month basis ([IRS Notice 2004-50 Q&A 58](#)).

Can a terminated employee spend down unused amounts for expenses incurred after termination?

No, they cannot use unused amounts to pay for claims incurred after the termination date unless there was a positive balance at the time of termination and COBRA is elected.

Yes, by plan design, unused HRA funds are permitted to be used for claims incurred after termination or as an alternative to COBRA. HRA is a health plan subject to COBRA.

Yes, HSAs are non-forfeitable and portable. Any qualified medical expense incurred after the HSA is set up is eligible for reimbursement on a tax-free basis.

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Do claims need to be incurred during the current period of coverage to be eligible for reimbursement?

Yes.

Yes, but claims incurred but not fully reimbursed due to insufficient HRA balance can be reimbursed (by plan design) in a subsequent year if the individual was a participant when the claims were incurred and is still a participant.

Distributions for qualifying medical expenses incurred after the HSA is established will be tax-free. A 20% excise tax applies if non-medical distributions are taken before age 65, death or total disability.

Must someone other than the covered employee/ individual process/ approve the claim, and is substantiation required for reimbursement?

Yes, substantiation is required at the time of reimbursement and must be reviewed by the employer or someone hired to be the plan's record keeper, like a TPA.

Yes, substantiation is required at the time of reimbursement and must be reviewed by the employer or someone hired to be the plan's record keeper, like a TPA.

No. However, the HSA owner must retain records. Substantiation is not required at the time of reimbursement but must be available in the event of an IRS audit.

Are there ordering rules that apply?

Yes, Health FSAs must be the payers of last resort and cannot reimburse expenses that have been reimbursed elsewhere. Note: Employers can draft HRA and health FSA plan documents so that an HRA pays only after the health FSA amounts are exhausted.

Yes, generally, claims are submitted to the HRA first, and then the health FSA reimburses any amounts not reimbursed by the HRA. Note: Employers can draft HRA and health FSA plan documents so that an HRA pays only after the health FSA amounts are exhausted.

While eligibility to contribute to an HSA is contingent upon HDHP coverage with no other disqualifying coverage, the HSA can reimburse any eligible expenses (as defined above) regardless of whether the individual is eligible to contribute to an HSA. An HSA cannot reimburse expenses that are already reimbursed from another source.

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Does Code §125 non-discrimination apply?

Yes, for health FSA offered under a cafeteria plan.

No, HRAs cannot be offered under a cafeteria plan.

HSAs offered under a cafeteria plan are subject to [Code §125](#) nondiscrimination requirements.

If the HSA is not subject to Section 125 rules, then the comparable contribution rules apply to employer contributions under Code Section 4980G-4.

Do Code §105(h) non-discrimination requirements apply?

Yes.

Yes.

A self-insured HDHP is be subject to Section 105(h) testing. However, HSAs are not subject to Section 105(h) because they are not considered to be health plans.

Is a trust account required?

No, not by the Code but possibly by ERISA if reimbursements are not made directly out of the employer's general assets.

No, not by the Code but possibly by ERISA if reimbursements are not made directly out of the employer's general assets.

Yes, a custodial trustee is required to hold funds.

Are account earnings taxable?

If reimbursements are made directly out of the employer's general assets, there are no earnings to tax.

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No, unless distributed for non-qualified expenses.

Is it an ERISA plan?

Yes, unless the plan is exempt as a governmental plan or church plan.

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Generally, no, but see [DOL FAB 2006-02](#) for exceptions.

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Is there a funding requirement?	No; however, if funds are set aside in a separate account by employer choice, funding may trigger ERISA's trust requirement.	No; however, if funds are set aside in a separate account by employer choice, funding may trigger ERISA's trust requirement as the liability increases.	The Code requires that HSA contributions are to be put in a trust. ERISA trust requirements may also apply if the HSA is deemed an ERISA plan.
Are there plan assets for ERISA purposes?	Yes, even for plans treated as "unfunded" under DOL Tech. Rel. 1992-01 , salary reductions are plan assets for purposes of ERISA's exclusive benefit and fiduciary rules.	With no employee contributions, HRAs generally do not have plan assets as long as all reimbursements are paid directly out of the employer's general assets.	Only if HSA is an ERISA plan, employer contributions and employees' pre-tax salary reductions would be plan assets (See April 7, 2004 DOL guidance and DOL FAB 2006-02).
Is an ERISA form 5500 required to be filed?	Yes, except for small plans (fewer than 100 participants/ unfunded plan).	Yes, except for small plans (fewer than 100 participants/ unfunded plan).	No, except for employer-sponsored HSA subject to ERISA. Filing requirements are unclear. HDHP may require Form 5500 reporting.
Do individuals/participants need to do anything differently on their personal tax returns?	No.	No.	Yes, IRS Form 8889 must be filed with a personal income tax return to report contributions and distributions.
Do ERISA SPD and other disclosures and adherence to ERISA's benefit claim procedures apply?	Yes (if an ERISA plan).	Yes (if an ERISA plan).	No, except for employer-sponsored HSAs subject to ERISA. Application of claims procedures are unclear since HSA claims are unsubstantiated and self-reported.

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Do portability, health status non-discrimination and privacy provisions of HIPAA apply?

Most health FSAs are designed to be excepted benefits for purposes of HIPAA, in which case the portability and nondiscrimination provisions do not apply. The HIPAA privacy provisions apply unless the plan sponsor self-administers claims under the plan, and there are fewer than 50 participants.

Generally yes. However, there is an exception to the portability and non-discrimination provisions for HRAs that qualify as HIPAA excepted benefits, and there is an exception to the privacy provisions if the plan sponsor self-administers claims under the plan and there are fewer than 50 participants.

Yes, for HDHP. Generally, the HSA itself is not subject to HIPAA privacy or portability regulations (it is a financial product rather than a group health plan), except in rare cases where the HSA constitutes an ERISA employee benefit plan.





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