EMPLOYEE BENEFITS

2024 HSA Guide

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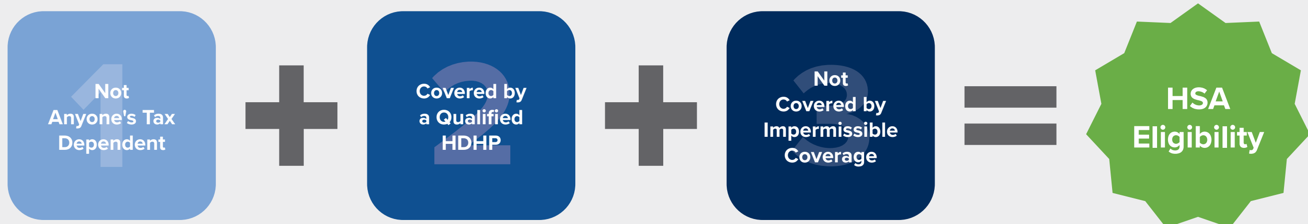
Introduction

A Health Savings Account (HSA) is an individually owned account that can be funded on a pre-tax (or tax-deductible) basis and used for the qualified medical expenses of the account holder and eligible dependents on a tax-free basis. The maximum amount an individual can contribute to an HSA during a year is dependent upon the tier of High-Deductible Health Plan (HDHP) coverage in which the individual is enrolled (self-only or family) and the number of months the individual is HSA-eligible during the calendar year. HSA accounts often provide investment opportunities to account holders, subject to minimum account balance requirements.

It is important to remember that many of the issues addressed in this guide involve an individual's tax-qualified status for HSA contributions. As a result, employers and individuals must work with their tax advisors when determining eligibility and limits for HSA contributions. Most of the information covered in this guide can be found in §223 of the Internal Revenue Code. However, additional IRS guidance is also referenced in the relevant sections of this guide.

Eligibility

An individual is HSA eligible if the following three conditions are satisfied:



HSA eligibility is determined on a monthly basis, which is important for determining what an individual's maximum annual contribution will be (discussed later in this guide). HSA eligibility for a month is determined by verifying that the individual meets each of the above requirements as of the first day of the month. If the individual does not meet the requirements on the first day of the month but meets the requirements later on in the month, they are not HSA-eligible for the entire month. If an individual is HSA-eligible as of the first day of a month but fails to meet one or more of the requirements later in that same month, they are treated as HSA-eligible for the entire month.

If an individual is HSA-eligible, this means that they are eligible to make contributions to an HSA and receive employer contributions to an HSA. An individual is not required to be "HSA-eligible" to take tax-free distributions from their HSA. In other words, an individual who is no longer eligible to make or receive HSA contributions may still take distributions from their HSA to reimburse qualified medical expenses. Similarly, a spouse or dependent is not required to be HSA-eligible for an individual to take tax-free distributions for the spouse's or dependent's qualified medical expenses. In addition, if a spouse or dependent is enrolled in the HDHP with the individual, and the spouse or dependent is not HSA- eligible, this will not impact the HSA eligibility of the individual or the maximum amount the individual can contribute for the month.

Not Anyone's Tax Dependent

The definition of tax dependent for purposes of determining whether an individual is eligible to establish an HSA account is not the same definition of tax dependent for purposes of determining whether the dependent's eligible medical expenses can be reimbursed from an HSA account. The definition of tax dependent for purposes of determining whether an individual's expenses can be reimbursed from an HSA account will be discussed later in this guide.

If an individual falls within any of the following categories, they are not eligible to establish an HSA:

- The individual is a taxpayer's child who is under age 19 at the end of the tax year;
- The individual is a taxpayer's child who is a student under age 24 at the end of the tax year; or
- The individual is a member of the taxpayer's household (other than the taxpayer's spouse) for whom the taxpayer provided over half of the individual's support for the year and whose gross income does not exceed the inflation-adjusted income limit under the Tax Cuts and Jobs Act, which replaced the previous personal exemption amount beginning in 2018.*

**The inflation-adjusted income threshold for dependent status was $4,400 in 2022. For 2023, the gross income limitation for tax dependent status is $4,700.*

Qualified High-Deductible Health Plan

There are two requirements for an HDHP to be considered a Qualified HDHP:

1. The plan complies with the minimum annual deductible requirement.
2. The plan complies with the maximum annual out-of-pocket limit requirement.

Minimum Annual Deductible

The minimum annual deductible for a Qualified HDHP is indexed annually* and differs depending on whether the individual is enrolled in self-only coverage or family coverage (anything other than self-only). To meet the minimum annual deductible requirement, the plan must not cover eligible medical expenses (except for preventive care) until plan participants meet the annual deductible requirement.

Year	Self-Only	Family
2022	$1,400	$2,800
2023	$1,500	$3,000
2024	$1,600	$3,200

**Amounts are normally updated in May of the prior calendar year.*

Embedded Deductibles

If a plan utilizes embedded deductibles for individuals covered under a family plan (a lower amount an individual must meet on their own before the plan starts covering the specific individual's expenses), the plan must ensure the embedded individual deductibles are no less than the minimum family deductible to maintain Qualified HDHP status.

EXAMPLE

ABC Company implements an HDHP with a family deductible of $4,000 and a self-only deductible of $2,000. Beginning in 2024, ABC Company decided to implement an embedded deductible of $2,000 for individuals covered by a family HDHP plan. In this case, ABC Company's HDHP is not a Qualified HDHP since the embedded deductible for individuals ($2,000) is less than the minimum family deductible ($3,200) for the year. Individuals enrolled in ABC Company's HDHP will not be HSA-eligible for all of calendar year 2024.

Preventive Care

Qualified HDHPs are permitted to cover preventive care expenses before the minimum annual deductible is satisfied without jeopardizing participants' HSA eligibility. Preventive care in this context has a different meaning than preventive care under the ACA's (Affordable Care Act) mandate to cover all preventive care at 100% and without cost-sharing. That said, all items required to be covered without cost-sharing under the ACA are also considered preventive for Qualified HDHP purposes, and covering these items without first applying the plan's deductible will not result in the plan failing to meet Qualified HDHP standards. In certain cases, items considered preventive under the Qualified HDHP rules are not required to be covered without cost-sharing under the ACA.

The IRS has provided a safe harbor when determining whether an item is considered preventive care for Qualified HDHP purposes. The safe harbor is not an all-inclusive list of items that may be considered preventive care. The following items are included in the safe harbor:

- Periodic health evaluations, including tests and diagnostic procedures ordered in connection with routine examinations, such as annual physicals
- Routine prenatal and well-childcare
- Child and adult immunizations
- Tobacco cessation programs
- Obesity weight-loss programs
- Screening services

Preventive care generally does not include any service or benefit intended to treat an existing illness, injury or condition. However, recent IRS guidance has expanded the definition of preventive care to include certain items for individuals diagnosed with specific chronic conditions. That guidance contains a list of the services and items related to certain chronic conditions that are considered preventive care. Similar services and items will be reviewed approximately every five to ten years to determine whether additional services or items should be added or removed from the list. The following list of items is currently approved by the IRS to be covered as preventive care before the HDHP minimum annual deductible is met if used to treat the condition it accompanies in the following chart.

Preventive Care for Specified Conditions	For Individuals Diagnosed with:
Angiotensin Converting Enzyme (ACE) inhibitors	Congestive heart failure, diabetes and/or coronary artery disease
Anti-resorptive therapy	Osteoporosis and/or osteopenia
Beta-blockers	Congestive heart failure and/or coronary artery disease
Blood pressure monitor	Hypertension
Inhaled corticosteroids	Asthma
Insulin and other glucose-lowering agents	Diabetes
Retinopathy screening	Diabetes
Peak flow meter	Asthma
Glucometer	Diabetes
Hemoglobin A1c testing	Diabetes
International Normalized Ratio (INR) testing	Liver disease and/or bleeding disorders
Low-Density Lipoprotein (LDL) testing	Heart disease
Selective Serotonin Reuptake Inhibitors (SSRIs)	Depression
Statins	Heart disease and/or diabetes

Maximum Annual Out-of-Pocket Limit

The maximum annual out-of-pocket limit for a Qualified HDHP is indexed annually and differs depending on whether the individual is enrolled in self-only coverage or family coverage (i.e., anything other than self-only). The Qualified HDHP out-of-pocket maximum limits the amount a plan participant must spend on items such as deductibles, co-insurance and copayments on an annual basis. Premiums are not included in this annual limit.

The ACA also imposes an annual maximum out-of-pocket limit for essential health benefits. The Department of Health and Human Services' (HHS) final rule on the ACA annual maximum out-of-pocket limit states that the annual limitation on cost-sharing for self-only coverage applies to all individuals regardless of whether the individual is covered by a self-only plan or is covered by a plan other than self-only. Therefore, HDHPs are required to embed the self-only ACA out-of-pocket maximum for family HDHP coverage.

EXAMPLE

EFG Company sponsors a HDHP in 2024 with a $8,050 self-only out-of-pocket limit and a $16,100 family out-of- pocket limit with a $9,450 embedded individual out-of- pocket limit. If the HDHP also complies with the minimum deductible requirement, the plan is a Qualified HDHP for 2024. In addition, since no single individual will be required to pay more than $9,450 out-of-pocket, the plan is ACA compliant. Notice that the plan is not required to embed the lower Qualified HDHP self-only limit ($8,050) within the family plan to meet the Qualified HDHP requirements.

Year	Self-Only		Family	
	Qualified HDHP	ACA	Qualified HDHP	ACA
2022	$7,050	$8,700	$14,100	$17,400
2023	$7,500	$9,100	$15,000	$18,200
2024	$8,050	$9,450	$16,100	$18,900

Impermissible Coverage

If an individual is covered by any health coverage that pays for significant medical care or treatment (besides preventive care) before the Qualified HDHP minimum deductible is satisfied, that individual is not HSA-eligible. This remains true whether the coverage is provided by the individual's employer or another source, such as a spouse's employer. Below is a table that describes which health coverages disqualify an individual from HSA eligibility.

Example 1 (General Purpose Health FSA)

Angie is an employee of HIJ Company and is enrolled in HIJ's Qualified HDHP. Angie's husband, Brady, is an employee of KLM Company and is enrolled in KLM's PPO major medical plan under the employee-only tier. Brady is also enrolled in KLM's general-purpose health FSA. Angie's medical expenses are eligible to be reimbursed from Brady's health FSA provided by KLM Company. Angie is not HSA-eligible for the duration of the KLM health FSA plan year, regardless of when Brady exhausts his FSA election.

Major Medical *(Other Than Qualified HDHP)*	**Impermissible Coverage**
General Purpose Health FSA (Flexible Spending Account)	**Impermissible Coverage** (Unless the health FSA is designed to reimburse expenses only after the minimum Qualified HDHP deductible is met).
General Purpose HRA (Health Reimbursement Arrangement)	**Impermissible Coverage** (Unless the HRA is designed to reimburse expenses only after the minimum Qualified HDHP deductible is met).
Medicare	**Impermissible Coverage** All parts of Medicare (A, B, C, D and supplements) will result in HSA ineligibility.
Medicaid	**Impermissible Coverage**
Tricare	**Impermissible Coverage**
VA (Veteran Affairs) Care	**Permissible Coverage** (If the care is provided to a veteran with a disability rating from the VA or the veteran has not accessed health care benefits from the VA for at least the last three months).
Limited Purpose Dental or Vision	**Permissible Coverage** (Limited purpose Health FSAs and HRAs are also permissible other coverage).
Telemedicine	**Permissible Coverage** For a limited time, telehealth services received during plan years beginning on or after January 1, 2023 and before January 1, 2025, regardless of whether the individual's payment equals the fair market value (FMV) of such service prior to the minimum Qualified HDHP deductible being met. Otherwise, impermissible coverage if individual does not pay the FMV for telehealth services prior to satisfying the minimum HDHP deductiblefor plan years and service dates outside of the limited time window.
EAP (Employee Assistance Program)	**Permissible Coverage** (Unless significant medical care or treatment is provided).
Wellness Plan	**Permissible Coverage** (Unless significant medical care or treatment is provided).
On-Site Clinic	**Impermissible Coverage** if individual does not pay the FMV for on-site clinic services prior to satisfying the minimum HDHP deductible (Unless the clinic does not provide significant medical care or treatment).

Example 2 (Post-Deductible General Purpose HRA)

Carmen is an employee of OPQ Company and is enrolled in OPQ's Qualified HDHP under the self-only tier. The self-only deductible under the OPQ HDHP for 2024 is $4,000. Carmen is also enrolled in OPQ's general-purpose HRA. OPQ's HRA is designed to begin reimbursing expenses for those enrolled in the self-only HDHP once the participant has reached a $1,600 deductible threshold. Carmen is HSA-eligible since OPQ's HRA does not reimburse expenses until the minimum Qualified HDHP deductible is satisfied.

Example 3 (Medicare Entitlement vs. Eligibility)

David is an employee of RST Company and is enrolled in RST's Qualified HDHP. David turned 65 on July 1, 2024. David has delayed receipt of Social Security benefits and did not enroll in Medicare upon becoming eligible. If David does not complete Medicare enrollment and does not become entitled to Medicare benefits as of December 1, 2024, he will be HSA-eligible for all of 2024.

Note: Depending on David's work-credit hours, it is possible that his Medicare Part A entitlement will become effective up to six months prior to the date he enrolls (never before the first of the month he would have become eligible). If this is the case, David will not be HSA-eligible for those months.

Example 4 (Telemedicine)

Ella is an employee of UVW Company and is enrolled in UVW's Qualified HDHP (1/1/24 – 12/31/24 plan year). Ella is also enrolled in UVW's telemedicine program (with the same plan year), under which she can be seen electronically by licensed physicians and prescribed medications. UVW's telemedicine program does not require employees to meet the minimum deductible for Qualified HDHPs before benefits are paid. Ella is HSA-eligible for all of 2024.

Example 5 (Telemedicine)

Ella, from the prior example, will not be HSA-eligible beginning with the 2025 plan year if UVW Company's telemedicine program remains the same, since the 2025 plan year falls outside of the limited window of eligibility (on page 7). However, if UVW's telemedicine program charges Ella the fair market value for services provided until Ella meets the minimum Qualified HDHP deductible, Ella will remain HSA-eligible during the 2025 plan year.

Note: This is a common strategy utilized by telemedicine service providers. To ensure HSA eligibility, the services must be priced at a rate equal to what it would cost an individual to receive the services if they went to a medical provider without any health coverage. However, because the IRS has not issued guidance regarding a clear definition of "fair market value" for this purpose, an employer should discuss this issue with their legal counsel.

Example 6 (Employee Assistance Program/EAP)

Felipe is an employee of XYZ Company and is enrolled in XYZ's Qualified HDHP and XYZ's EAP. XYZ's EAP provides the following services at no cost before employees meet the Qualified HDHP minimum deductible:

- Short term counseling for issues such as substance abuse, alcoholism, mental health, emotional disorders, financial or legal difficulties, and dependent care needs;
- A program that identifies employees and their family members who have, or are at risk for, certain chronic conditions and provides evidence-based information, disease-specific support, case monitoring, and coordination of the care and treatment provided by a health plan;
- Education and fitness services designed to improve the overall health of the employees, including stress management and health screenings.

Felipe is HSA eligible since, according to IRS guidance, the EAP does not provide significant medical care or treatment.

Example 7 (On-Site Clinic)

Felipe, from the prior example, is provided access to an on-site clinic by XYZ Company. The on-site clinic provides access to licensed physicians for a variety of services such as mental health care, medical diagnoses and writing prescriptions at no cost before employees meet the Qualified HDHP minimum deductible. Felipe is not HSA- eligible since the on-site clinic provides significant medical care and treatment.

Note: The IRS has provided guidance stating on-site clinics that limit services to "(1) physicals and immunizations; (2) injecting antigens provided by employees (e.g., performing allergy injections); (3) dispensing a variety of aspirin and other nonprescription pain relievers; and (4) treatment for injuries caused by accidents at the plant" at no cost to employees before the minimum Qualified HDHP deductible is satisfied will not result in a loss of HSA eligibility.

Employer's Responsibility to Determine Eligibility

Since many of the factors that need to be considered when determining HSA eligibility will be unknown to most employers, most of the responsibility to determine HSA eligibility falls to individual employees. For example, employers are not required to request proof or documentation from employees showing that they are not enrolled in impermissible coverage provided from another source.

However, employers who permit employees to make pre-tax contributions to their HSAs and employers who make contributions to their employees' HSA accounts are required to ensure that individuals making and receiving HSA contributions are enrolled in a Qualified HDHP through the employer and that they are not enrolled in impermissible coverage through the employer. Employers could also choose to permit employees who are not enrolled in the employer's Qualified HDHP to make pre-tax contributions to their HSA through the employer's Section 125 plan if the employee certifies that they are enrolled in a Qualified HDHP from another source, such as a spouse's employer's Qualified HDHP.

In addition, employees will generally look to employers for guidance in determining whether they are HSA-eligible. Therefore, it is recommended employers provide basic information to employees about the HSA eligibility requirements in plan communications, such as open enrollment and new-hire materials.

Contributions

Both employers and employees are permitted to make contributions to employees' HSA accounts on a pre-tax basis. The contributions are subject to an annual limit based on the tier of HDHP coverage in which the individual is enrolled, the months out of the year that the individual is HSA-eligible and the age of the HSA account holder.

Annual Maximum

The maximum annual HSA contribution is indexed annually and differs depending on whether the individual is enrolled in self-only coverage or family coverage (i.e., anything other than self-only).

Year	Self-Only	Family	Catch-Up
2022	$3,650	$7,300	$1,000
2023	$3,850	$7,750	$1,000
2024	$4,150	$8,300	$1,000

There are two methods to determine an individual's annual HSA maximum contribution.

Prorated (Monthly) Maximum Contribution Method

The first method to determine an individual's annual HSA maximum contribution depends on the number of months out of a year that an individual is HSA-eligible. Under this method, the individual is eligible to contribute up to 1/12th of the applicable annual maximum for each month in the year during which the individual is HSA-eligible.

EXAMPLE

Grace (age 40) is an employee of ABC Company and is enrolled in ABC's Qualified HDHP under the self-only tier (1/1/24 – 12/31/24 plan year). Grace's wife, Hattie, is an employee of EFG Company and is enrolled in EFG's PPO plan under the employee plus spouse tier (1/1/24 – 12/31/24 plan year) covering both herself and Grace. Hattie's employment with EFG Company terminates as of 7/15/24, and she loses eligibility for active coverage under EFG's group health plan as of 8/1/24. Hattie enrolls in COBRA for herself, but not Grace, from 8/1/24 – 12/31/24.

Under the first method to determine Grace's maximum annual HSA contribution, Grace is eligible to contribute up to $1,604.15 to her HSA for 2024 because she is HSA-eligible for five months (8/1/24 – 12/31/24) in 2024.

Calculation

$4,150 *(2024 self-only maximum)* / 12 months =
$345.83 a month

$345.83 a month x 5 months =
$1,729.15 annual maximum contribution

Full Annual Maximum Contribution Method

The second method to determine an individual's annual HSA maximum contribution states that if the individual is HSA-eligible as of December 1st of the applicable year and remains HSA-eligible until December 31st of the following year, the individual will be eligible to contribute the entire HSA annual maximum for the applicable HDHP coverage (e.g., self-only/family coverage) and applicable year regardless of the number of months the individual was HSA-eligible during the applicable year. This is also sometimes referred to as the "last-month rule."

EXAMPLE

Grace, from the prior example, is HSA-eligible as of December 1, 2024, since she is no longer covered by EFG's PPO plan. Grace remains HSA-eligible until December 31st, 2024. Therefore, under the full annual maximum contribution method for self-only HDHP coverage, Grace is eligible to contribute up to $4,150 for 2024.

Note: If Grace lost HSA eligibility before December 31st, 2025, her annual HSA maximum contribution for 2024 would be calculated under the prorated maximum contribution method. Because losing HSA eligibility in the year after the year in which the last-month rule is used may result in increased taxable income and additional tax, an employee who decides to rely upon this method should consult their legal and tax advisors..

Catch-Up Contributions

Individuals aged 55 or older by December 31st of a given calendar year are eligible to contribute up to an additional $1,000 for the year. The catch-up contribution is calculated in the same manner as the typical HDHP annual maximum contribution amount. In other words, the catch-up contribution is calculated using the prorated maximum contribution method or the full annual maximum contribution method

EXAMPLE 1

Isaac is an employee of HIJ Company and is enrolled in HIJ's Qualified HDHP under the family tier from January 1, 2024, to December 31, 2024. Isaac turns age 55 on June 15, 2024. Isaac is eligible to contribute up to $9,300 for 2024.

Note: Isaac is eligible for the entire $1,000 catch-up contribution, although he was only age 55 or older for part of the year..

Calculation

$8,300 *(2024 family maximum)* +
$1,000 *(2024 catch-up)* = **$9,300**

EXAMPLE 2

Isaac, from the prior example, terminates employment with HIJ company as of August 15, 2024, and loses eligibility for coverage on the same day. Isaac does not enroll in COBRA and is not enrolled in another Qualified HDHP for the rest of the year. Isaac is eligible to contribute up to $6,200.00 for 2024.

Calculation

$8,300 *(2024 family maximum)* +
$1,000 *(2024 catch-up)* = $9,300

$9,300 / 12 months = **$775.00 a month**

$775.00 a month x 8 months = **$6,200.00**

Switching Coverage Tiers

If an individual is enrolled in the family coverage tier at the beginning of the calendar year and decreases HDHP coverage by the end of the calendar year, the maximum annual contribution is calculated by multiplying 1/12th of each coverage tier's maximum annual contribution by the number of months the individual is enrolled in each tier and adding the amounts together. Alternatively, if the employee is enrolled in family tier coverage as of December 1st of the applicable year and remains HSA-eligible until December 31st of the following year, the individual is eligible to contribute up to the family maximum for the applicable year.

EXAMPLE 1 (Monthly Annual Maximum Contribution Method)

Jenny is an employee of KLM Company and is enrolled in KLM's Qualified HDHP under the self-only tier from January 1st, 2024 to April 15th. Ken, Jenny's husband, loses his employer provided health coverage on April 15th, therefore Jenny enrolls in the family tier of KLM's HDHP as of April 16th, 2024. Jenny's maximum annual HSA contribution is $6,916.61.

Calculation

$4,150 *(2024 self-only maximum)* / 12 months = $345.83 a month x 4 months = **$1,383.33**

$8,300 *(2024 family maximum)* / 12 months = $691.66 a month x 8 months = **$5,533.28**

$1,283.32+ $5,533.28 = **$6,916.61**

EXAMPLE 2 (Full Annual Maximum Contribution Method)

Jenny, from the prior example, maintains HSA eligibility through December 31st, 2024. Therefore, Jenny's maximum annual HSA contribution for 2024 is $8,300.

Note: Jenny is not required to remain enrolled in the family tier of a Qualified HDHP through December 31st, 2024 to contribute the family annual maximum for 2024. If Jenny switched to the self-only tier on January 1st, 2025, but remained HSA-eligible until December 31st, 2025, she would still be eligible to contribute up to $8,300 for 2024.

Rule for Married Individuals

If both spouses of a marriage are HSA-eligible, and either spouse is covered by family HDHP coverage (i.e., other than self-only coverage), then both are treated as having family HDHP coverage and split the family maximum contribution between them. The spouses are permitted to determine how the family maximum will be split. The spouses can choose to have one spouse contribute the entire family maximum while the other contributes nothing. Alternatively, the spouses can each contribute an amount that, when added together, does not exceed the family maximum. However, catch-up contributions are allocated separately to each spouse, and one spouse cannot take advantage of the other spouse's catch-up contribution.

This rule for married individuals does not apply to other enrolled individuals who are not married spouses, such as covered domestic partners or dependents. Therefore, if a domestic partner or dependent is covered by family HDHP coverage (other than self-only coverage) and are otherwise HSA-eligible, they can contribute up to the family maximum to their HSA regardless of the amount any other covered individual within the family/household contributes.

EXAMPLE 1

Otis (age 45) is an employee of RST Company and is enrolled in RST's Qualified HDHP under the family tier, covering himself and his son Peter from January 1, 2024 to December 31st, 2024. Otis's husband Roger (age 40) is an employee of UVW Company and is enrolled in UVW's Qualified HDHP under the family tier, covering himself and his daughter Sophie from January 1, 2024 to December 31, 2024.

During calendar year 2024 Otis contributes $4,000 and Roger contributes $4,300 into their respective HSA accounts, adding up to the 2024 family maximum contribution ($8,300). Their combined contributions do not exceed the applicable limit under the IRS rules.

EXAMPLE 2

Logan (age 56) is an employee of XYZ Company and is enrolled in XYZ's Qualified HDHP under the family tier, covering himself and his daughter Morgan (age 25) from January 1, 2024 to December 31, 2024. Logan's wife Nadine (age 50) is an employee of ABC Company and is enrolled ABC's Qualified HDHP under the employee-only tier from January 1, 2024 to December 31, 2024.

Nadine contributes $8,300 into her HSA account during calendar year 2024 (the 2024 family maximum contribution). Logan contributes $1,000 to his HSA account during calendar year 2024 (the 2024 catch-up contribution). Nadine is not permitted to contribute more than the 2024 family maximum contribution amount since she is not eligible for a catch-up contribution.

Note: Under the special rule for married individuals, Nadine is eligible to contribute up to the family maximum even though she was not covered by family HDHP coverage. Also, if Logan did not take advantage of his catch-up contribution of $1,000, Nadine would still be unable to make a catch-up contribution of $1,000 to her HSA, because Logan is the only individual qualified to make a catch-up contribution to his HSA due to age.

EXAMPLE 3

Morgan, from the prior example, does not receive over half of her support from any individual. In other words, for purposes of HSA eligibility, Morgan is not anyone's tax dependent. Assuming Morgan is not covered by any impermissible coverage, she is eligible to contribute up to the family maximum for 2024. This is true even if Nadine contributes the entire family maximum to her HSA for 2024.

Timing

Before an individual can make contributions to an HSA account, they must have gone through the necessary steps to establish the HSA account. The timing of when an HSA is considered "established" is contingent upon state law. Also, to successfully establish an HSA account, the individual must be HSA-eligible. Therefore, individuals cannot make their first HSA contribution until they are HSA-eligible. Making HSA contributions to an HSA account before an individual is HSA-eligible can result in unintended tax consequences for the account holder. However, individuals can make HSA contributions to their HSA accounts after they have technically lost eligibility to contribute to an HSA, as long as they do not exceed their specific annual maximum for the year (calculated based on the number of months they are HSA-eligible during the year), without the same unintended tax consequences.

Individuals who have not contributed the maximum during the calendar year can continue to make HSA contributions towards an immediately preceding year's annual maximum until the original tax filing deadline for the applicable year (generally April 15th of the following year, unless April 15th falls on a weekend, in which case the deadline is the following business day). However, the HSA custodian must be informed if any contributions received after the end of the tax year are to be allocated towards the prior year's annual maximum. Employer HSA contributions made in a subsequent year towards the immediately preceding year's annual maximum are required to be reported on the Form W-2 for the year in which the contributions are actually made. That said, many employers do not permit employees to apply pre-tax contributions to their HSA accounts towards the prior year's annual maximum to limit administrative responsibilities (such as notifying the HSA custodian of the allocation). In this case, individuals should contact their personal tax advisors to determine if they can make post-tax HSA contributions and take a deduction from their income tax returns when they file for the applicable year.

Account Holder

HSA accounts are individually owned accounts. Therefore, spouses are not permitted to dually own or “share” an HSA account.

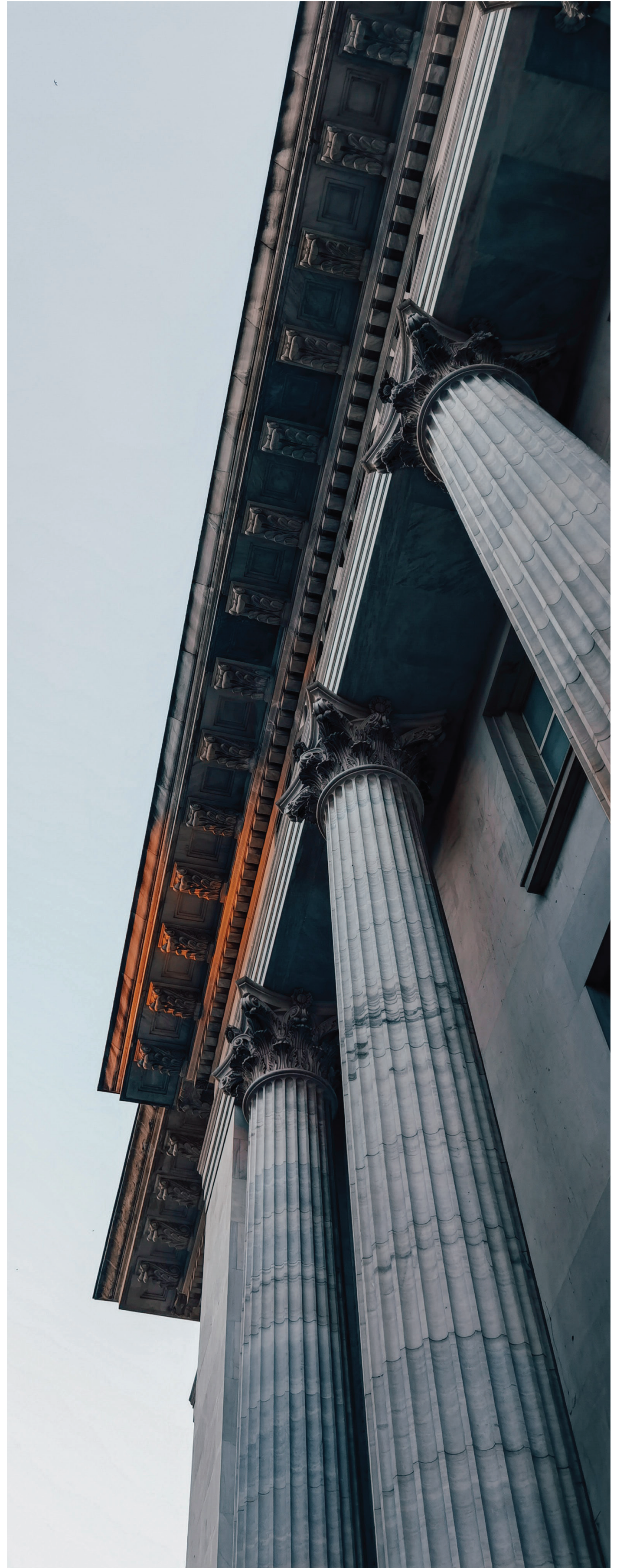
If an individual intends to make HSA contributions, they must establish their own HSA account. In other words, one spouse may only make/receive HSA contributions into his/her/their own HSA account, and any contributions made by a spouse of that account holder to that account are considered owned by the HSA account holder.

Pre-Tax Contributions

Employers may permit employees to make pre-tax contributions to their HSA accounts through the employer’s Section 125 cafeteria plan, or they may permit employees to make contributions to their HSAs through post-tax payroll deductions. If an employer does permit employees to make pre-tax contributions to their HSA accounts through the employer’s Section 125 cafeteria plan, they must permit employees to change their HSA elections at least once per month. In addition, individuals can make post-tax contributions to their HSA accounts outside of their employer’s payroll. As mentioned above, if an individual makes post-tax contributions to their HSA account, they should contact their personal tax advisor to determine if they are permitted to deduct HSA contributions on their income tax return for the applicable year.

Employers are also permitted to make contributions to an employee’s HSA account, which may be excluded from income tax and FICA withholding if they do not exceed the employee’s annual maximum contribution amount when combined with all other contributions to the account, and it was reasonable for the employer to believe those amounts would be excluded from income. An employer should contact their legal and tax advisors to determine the tax implications of contributions to employees’ HSA accounts. Employer contributions to a partner’s or more- than-2% S-Corp shareholder’s HSA accounts are taxable. However, the partner or shareholder should contact their personal tax advisor to determine if they can claim a deduction for those post-tax contributions when filing their income taxes for the year.

Employer contributions to their employees’ HSA accounts may be subject to various other IRS rules, depending on whether the employer permits employees to make pre-tax contributions to their HSA accounts through the employer’s Section 125 cafeteria plan.



Section 125 Non-Discrimination Testing

If an employer permits its employees to make pre-tax contributions to their HSA accounts through the employer's Section 125 cafeteria plan, and the employer also makes contributions to employee HSA accounts, the employer's contributions will be subject to Section 125 nondiscrimination rules. Under Section 125, employers are prohibited from discriminating in favor of highly compensated or key employees.

Therefore, employer HSA contribution strategies that include contributing different amounts to different categories of employees should be closely monitored and reviewed by the employer's legal counsel to ensure the contribution strategy does not result in the employer's Section 125 plan failing nondiscrimination testing. Specifically, contribution strategies that involve contributing more towards management or salaried employees, as opposed to other workers or hourly employees, may result in failure of Section 125 nondiscrimination testing. If a Section 125 plan fails nondiscrimination testing, all benefits provided to highly compensated or key employees through the plan will be considered taxable income to those employees.

Employer Does Not Permit Pre-Tax Employee Contributions

If an employer does not permit employees to make pre-tax contributions to their HSA accounts through the employer's Section 125 cafeteria plan, and the employer makes contributions to employee HSA accounts, the employer's contributions will be subject to the comparability rules contained in Section 4980G of the Internal Revenue Code. The comparability rules are complex, and most employers who make contributions to their employees' HSA accounts permit employees to make pre-tax contributions through the employer's Section 125 plan. Therefore, this guide will not cover every aspect of the comparability rules, and an employer who intends to follow this approach should obtain the advice and assistance of legal counsel. However, some of the major aspects of the comparability rules are outlined below.

The comparability rules severely restrict an employer's ability to offer different HSA contributions to different categories of employees. In general, employer contributions that are subject to the comparability requirements permit employers to differentiate HSA contributions based only on the following employee categories:

- Collectively bargained vs. non-collectively bargained;
- Tiers of HDHP coverage (self-only, self plus one, self plus two and self plus three or more), where contributions towards higher tiers are greater than contributions for lower tiers;
- Highly compensated vs. non-highly compensated, if greater contributions are made to non-highly compensated employees (as long as the same contributions are made to all non-highly compensated employees within the same group and the same contribution is made to all highly compensated employees within the same group)
- Current full-time vs. current part-time;
- Current employees vs. former employees

Employers who are subject to the comparability requirements may not make differing HSA contributions based on whether employees are paid on an hourly basis or are salaried, whether employees are employed in different geographic locations, whether employees are employed by different employment divisions, the employee's own contribution (such as a matching program), whether employees participated in wellness activities, or other bona fide employment classifications.

Finally, the comparability rules place responsibility on the employer to ensure contributions are made to every employee's HSA who is in a comparable category. For example, employers are required to take certain actions to track down former employees to make contributions to their HSA accounts to maintain compliance. In addition, the comparability rules require employers to contribute a reasonable amount to employees' HSA accounts who fail to establish their accounts in time for the employer's regular contributions to account for interest that would have accumulated in that time.

Correcting Errors

Amounts contributed in excess of an individual's annual maximum and amounts contributed before an individual is HSA-eligible are both considered "excess contributions." Excess contributions are included in the individual's gross income and, if they are not distributed from the HSA account before the tax filing deadline for the applicable year (typically April 15th of the following year), are subject to a 6% excise tax for each year the amounts (along with any growth/gains/interest related to those amounts) remain in the HSA account.

Account holders can request a "curative distribution" from the HSA custodian before the applicable tax filing deadline to avoid the excise tax. When a curative distribution is made, the excess amount plus the net income attributable to the excess amount is distributed from the HSA account to the account holder. The curative distribution should be reported on the individual's W-2 as taxable income for the year in which it was made. An account holder who has excess contributions and receives a curative distribution should contact their personal tax advisor to determine the impact on their income tax return.

It is important to note that employer HSA contributions are "nonforfeitable." This means employers are not permitted to reach back into an employee's HSA account to recover funds after they are deposited. Therefore, if an employer mistakenly makes an HSA deposit to an individual who is no longer eligible, resulting in excess contributions to the individual, the individual must be the one to request the curative distribution and will receive the distribution as additional taxable income.

That said, if an employer makes contributions to an individual's account, but the individual was not HSA-eligible at the time the account was opened, the IRS has provided guidance stating the employer may request the custodian to return the employer's contribution. The IRS states that in this case, the account was never considered an HSA, and therefore the nonforfeitable requirement will not apply.

The IRS guidance also states that an employer may request the custodian to return the employer's contribution in two other situations:

- When the employer's contributions exceed the annual statutory maximum contribution amount for the year; and
- When there is "clear documentary evidence demonstrating that there was an administrative or process error" (the guidance contains examples of such situations).

However, HSA custodians do not uniformly return employer contributions in these situations. Employers should consult with their tax advisors for advice in these situations.

Distributions

HSA account holders are permitted to take tax-free distributions from their HSA accounts for their own qualified medical expenses and the qualified medical expenses of their spouse and qualified dependents as long as the expense has not been reimbursed through insurance or elsewhere. HSA account holders should keep receipts for HSA distributions to provide in the case of an IRS audit.

Eligible Dependents

Generally, a dependent whose expenses are eligible to be reimbursed on a tax-free basis from an individual's HSA account is a child up to age 19 or a child under age 24 who is a full-time student. It is important to note that this definition of dependent differs from that which applies to the employer's major medical plan. The ACA requires group health plans to provide major medical plan coverage up to age 26 for dependents if dependent coverage is offered. Therefore, an individual's dependent may be eligible to be covered by the employer's HDHP, yet the HSA account holder may not necessarily be able to use their HSA funds for the medical expenses of the dependent. An individual who has questions regarding the use of their HSA funds for the medical expenses of their dependent should discuss the issue with their tax advisor.

Qualified Medical Expenses

Generally, a qualified medical expense is an expense for medical care as defined by Section 213(d) of the Internal Revenue Code. Specific examples of the qualified status of common medical expenses can be found in the following illustration.

Non-Medical Expenses

If an individual under the age of 65 takes a distribution from their HSA account for an expense that is not a qualified medical expense, the distribution will be subject to a 20% penalty tax in addition to income tax for the year in which the distribution is received. However, distributions for non-qualified expenses taken by individuals aged 65 or older are subject only to income tax and are not subject to the 20% penalty tax.

Qualified

- Most medical care that is subject to an individual's deductible
- Copays
- Coinsurance
- Doctor visits
- Inpatient or outpatient treatment
- Prescription and over the counter drugs
- Insulin (with or without a prescription)
- Dental and vision care
- Select insurance premiums:
  - COBRA
  - Qualified long-term care insurance
  - Health insurance premiums paid while receiving unemployment benefits
  - Health insurance after an individual turns age 65 (except Medicare supplemental policies)

NOT Qualified

- Insurance premiums (other than the specific exceptions provided)
- Surgery purely for cosmetic reasons
- Expenses covered by another insurance plan
- General health items such as tissues, toiletries and hand sanitizer

Timing

Expenses must be incurred after an individual's HSA has been established for an individual to receive reimbursement for any qualified expenses on a tax-free basis. However, there is no "deadline" to take a distribution for an incurred expense. In other words, account holders may take distributions for expenses incurred in prior years as long as funds remain in the individual's HSA account. In addition, individuals are permitted to receive distributions from their HSA account even after they have lost eligibility to make or receive contributions to the account.

Rollovers

HSA account holders are permitted to request rollovers from their HSA account to deposit the amount with another HSA custodian. These rollovers are not subject to the 20% penalty tax even though the distribution is not for a qualified medical expense, as long as the amount is subsequently deposited into another HSA account for the accountholder's benefit within 60 days of the distribution being received by the account holder. Rollovers of this type are only permitted once during each 1-year period (e.g., if an HSA account holder requests a rollover distribution on October 1, 2024, he/she must wait one full year from that date to request another rollover distribution). However, if the HSA account holder is never in possession of the funds, and the funds are instead transferred directly from the first HSA custodian to the second HSA custodian, the once per year limitation will not apply.

Reporting

Both employer and employee pre-tax contributions to an employee's HSA account should be reported as an aggregate sum in box 12 of the employee's W-2 using code W.

The Brown & Brown Employee Benefits Regulatory and Legislative Strategy Group will continue to review and monitor developments.

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