



ADMINISTRATIVE RULES OF MONTANA

2.43.2211 PROCEDURES - BONA FIDE CAFETERIA PLANS

- (1) Elective employee contributions must be made to a bona fide cafeteria plan for that contribution to be eligible for treatment as compensation for purposes of PERS, JRS, HPORS, SRS, GWPORS, MPORS, and FURS.
- (2) To be a bona fide cafeteria plan, the employer must establish and sponsor a written plan that includes the requirements of IRC section 125 outlined in (3) through (12). The cafeteria plan must also be operated in compliance with the requirements of IRC section 125 outlined in (3) through (12). The board may, from time to time, review an employer's cafeteria plan documentation and require that an employer certify or provide evidence to the board that its cafeteria plan has been operating in compliance with IRC section 125.
- (3) The written plan document must incorporate all of the operating rules prescribed in IRC section 125 and its regulations and must be formally adopted by the employer before the first day of the first plan year of the cafeteria plan.
- (4) The written cafeteria plan document must contain operating rules covering each of the following topics:
 - (a) a description of benefits available under the plan;
 - (b) eligibility rules;
 - (c) how the plan is funded and the maximum amount of employer and employee contributions;
 - (d) the plan year;
 - (e) timing of participant elections and how elections are made; and
 - (f) irrevocability of participant elections.
- (5) All participants in the cafeteria plan must be employees.
 - (a) Self-employed individuals cannot participate in the cafeteria plan; and
 - (b) Independent contractors cannot participate in the cafeteria plan.
- (6) The cafeteria plan must allow participants to choose among two or more benefits consisting of cash and qualified benefits.
- (7) Under an affirmative election, the employee must be permitted to elect, on an annual basis, whether to purchase qualified benefits under the cafeteria plan.
- (8) Under a mandatory election, the cafeteria plan can mandate that, if an employee chooses a certain benefit, he must pay for it on a pretax basis; however, the employer cannot mandate both

that the employee choose the benefit and that he pay for it on a pretax basis under the cafeteria plan.

- (9) Under a waiver, an employee will be deemed to have elected qualified benefits under the cafeteria plan unless the employee signs a waiver, on an annual basis, of those benefits under the cafeteria plan.
- (10) The cafeteria plan may offer only qualified benefits as defined under IRC section 125(f) .
 - (a) Qualified benefits include:
 - (i) benefits that do not defer the receipt of compensation and are not included in gross income by reason of an express provision in chapter I of the IRC, including:
 - (A) coverage under an accident or health plan to the extent the coverage is excludable from income under IRC section 106 (including medical expense reimbursement accounts) ;
 - (B) group term life insurance excluded under IRC section 79; and
 - (C) benefits under a dependent care assistance program excluded under IRC section 129;
 - (ii) vacation days;
 - (iii) contributions to a 401(k) plan; and
 - (iv) adoption assistance excluded under IRC section 137.
 - (b) Qualified benefits do not include:
 - (i) fringe benefits governed by IRC section 132 (such as pretax parking and qualified employee discounts) ;
 - (ii) scholarships under IRC section 117;
 - (iii) educational assistance programs under IRC section 127; and
 - (iv) long-term care insurance.
- (11) Elections made under the cafeteria plan must be irrevocable for an entire plan year, except to the extent mid-year election changes are permitted under IRC section 125 and its regulations.
- (12) The cafeteria plan must satisfy the nondiscrimination requirements of IRC section 125.

Authorizing statute(s): 19-2-403, MCA

Implementing statute(s): 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA

History: NEW, 2005 MAR p. 2241, Eff. 11/11/05; TRANS, from ARM 2.43.911, 2008 MAR p. 2467, Eff. 12/1/08.