

EMPLOYEE BENEFITS

2022 FSA/HRA/HSA Comparison

	Health FSAs	HRAs	HSAs
IRS Tax Code Section	<u>Internal Revenue Code §125</u>	<u>Internal Revenue Code §105/</u> <u>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?	Any common-law employee, subject to employer plan design exclusions. Note: Greater than 2% shareholders of S Corp and family members, LLC members, partners in a partnership and sole proprietors are NOT eligible.	Any common-law employee, subject to employer plan design exclusions. 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.	Any individual covered under a High Deductible Health Plan (HDHP) as defined in Code §223 is not entitled to Medicare and is not claimed as a tax dependent. With certain exceptions, the individual cannot have any other non-HDHP coverage.
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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 \$570 carryover* (as indexed for inflation) of unspent account balances from the 2022 plan year to the 2023 plan year. *Carryover provisions cannot apply to plans that have a 2-1/2 month grace period to incur expenses after the close of the plan year.	Yes.	Yes.
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Do you need to have a specific health plan to be eligible?	No, this is a health plan by itself and does not require any additional health program to operate. However, to be 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.	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, another employer or the Marketplace in the case of an Individual Coverage HRA (ICHRA).	Yes. An HDHP with a minimum deductible of \$1,400 self only coverage and \$2,800 family coverage with no first dollar coverage except dental, vision and preventive care per Code §223 . Maximum Out-of-Pocket limits: \$7,050 self only and \$14,100 family for contracts with non-embedded Out-of-Pocket limits. For family contracts with embedded individual Out-of-Pocket limits, the maximum family Out-of-Pocket limit is \$8,700 to comply with the ACA's requirement that minimum essential coverage has an individual Out-of-Pocket limit that is no greater than \$8,700 . HDHP minimum annual deductible and out-of-pocket limits apply based on the plan year.
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What are the plan limits?	<p>The employer sets plan limit. 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 is available on the first day of the plan year.</p> <p>Effective 1/1/2022, the maximum annual limit on salary reduction contributions to a health FSA is \$2,850 per plan year.</p>	<p>The employer sets 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.</p>	<p>Maximum of \$3,650 for self-only coverage and \$7,300 for family coverage (indexed annually) without regard to health plan deductible or the number of months the individual is HSA eligible so long as HSA eligible on December 1st and remains HSA eligible for the following calendar year. Excess funding is subject to 6% excise tax. Additional catch-up contribution of \$1,000 if over the age of 55 by the end of the tax year.</p>
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What medical expenses are eligible for reimbursement?	<p>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.</p>	<p>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.</p>	<p>Unreimbursed Code §213(d) medical expenses of account holder, accountholder's spouse and eligible tax dependents are eligible for reimbursement. Expense must be incurred after HSA is established. Includes premiums for COBRA, long-term care insurance, health insurance while receiving unemployment compensation; or, if 65 or older, health insurance other than a Medicare supplement.</p>
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Can you cash out balances for non-medical expenses?	No.	No.	Yes, but such amounts are taxable and subject to a 20% excise tax until age 65, plus are includable in income, and certain exceptions apply.
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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 family status changes (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).
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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, HRAs can permit claims incurred after termination to be used towards unused balances by plan design 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 to withdraw funds 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. For tax years after 2010, a 20% excise tax applies to non-medical deductions if done before age 65, death or disability.
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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.
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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 to pay only after 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 to pay only after health FSA amounts are exhausted.

No, HSA-eligible individual can't have non-HDHP coverage. Certain permitted coverage is disregarded. The HRA or health FSA is not permitted coverage unless restricted to pay only permitted coverage benefits (i.e., dental, vision, preventative care) or to pay benefits only after the statutory minimum HDHP deductible is met. Cannot reimburse expenses that are reimbursed elsewhere.

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](#) non-discrimination requirements.

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

Yes.

Yes.

Yes, for a self-insured HDHP only. No for HSA, but if employers make HSA contributions, [Code §4980G-4](#) requires comparable contributions be available for comparable participating employees. (Comparable contribution rules do not apply if the HSA contributions are made through a Section 125 Cafeteria Plan.)

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.

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Are account earnings taxable?	If reimbursements are made directly out of the employer's general assets, there are no earnings to tax.	If reimbursements are made directly out of the general assets of the employer, there are no earnings to tax.	No, unless distributed for non-qualified expenses.
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Is it an ERISA plan?	Yes, unless the plan is exempt as a government entity or church.	Yes, unless the plan is exempt as a government entity or church.	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 due to employer contributions.
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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).
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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).	Generally, no, except for employer-sponsored HSA subject to ERISA, filing requirements are unclear. HDHP may be required to file.
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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 ERISAs benefit claim procedures apply?

Yes.

Yes.

Generally, no, except for employer-sponsored HSAs subject to ERISA. Unclear since HSA claims are unsubstantiated and reported.

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 sponsors 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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