



## Flexible Spending Account Non-Discrimination Testing

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## Why do we need Discrimination Testing?

If you have a Flexible Spending Account (FSA) or a Premium Only Plan (POP), the IRS requires you to submit to non-discrimination testing once a year. The reason for nondiscrimination testing is to prevent Key and highly compensated employees from taking advantage of the benefits that these plans provide for employers and employees alike. Such advantages consist of an increase in take home pay because the dollars spent are pre-tax and a 7.65% savings annually on employers matching FICA tax.

Nondiscrimination testing is a big factor in way of compliance. If employers do not adequately follow all the steps necessary for nondiscrimination testing, or they fall out of compliance with federally mandated regulations while using these plans, all discriminatory benefits are included in the gross pay of highly compensated employees. This also means that employers can no longer take advantage of the 7.65% tax break on their annual employer matching FICA tax.

## What Are the Specific Tests to Conduct?

There are nine different tests that can be applicable to benefits provided under a Section 125 plan. Some tests are related to eligibility and availability of benefits, and other tests are based on actual benefits elected (utilization).

### **The Section 125 Cafeteria Plan**

1. Eligibility Test
2. Contributions and Benefits Test
3. Key Employee Concentration Test (utilization)

### **Health FSAs**

4. Eligibility Test
5. Benefits Test

### **Dependent Care FSA (DCAP)**

6. Eligibility Test
7. Contributions and Benefits Test
8. More-Than-5% Owners Concentration Test (utilization)
9. 55% Average Benefits Test (utilization)

