

EMPLOYEE BENEFITS ALERT

This Employee Benefits Alert is published by our Employee Benefits Section. Please feel free to contact the attorneys listed below for more information.

George J. Kasper	203.330.2119	gkasper@pullcom.com
Nancy D. Lapera	203.330.2107	nlapera@pullcom.com
Herbert H. Moorin	203.330.2124	hmoorin@pullcom.com
Barrie K. Wetstone	860.541.3342	bwetstone@pullcom.com
Lori L. Underberger	203.330.2202	lunderberger@pullcom.com

“Cafeteria Plans” under Internal Revenue Code Section 125

A Cafeteria Plan is a written plan for the benefit of your employees that offers a choice between a taxable benefit (compensation) and one or more nontaxable benefits, such as pre-tax payment of premiums for medical insurance or some other qualified benefit, such as accident insurance or disability insurance. Without the formal adoption of a written Cafeteria Plan document, the IRS will treat a participating employee as having received taxable income which is also wages for employment tax purposes. Therefore, if you are (i) allowing employees to pay their portion of your company’s group health insurance and other benefits with pre-tax dollars, or (ii) paying less compensation to employees who elect such benefits, then you must have a written Cafeteria Plan document.

The Internal Revenue Service recently issued proposed regulations under Code Section 125 that replace many of the prior regulations. The current terms of the proposed regulations provide that they will become effective for plan years beginning on or after January 1, 2009. If a Cafeteria Plan document does not contain the provisions required under the new regulations, the amount of compensation waived or amount of contributions made through payroll deductions, is taxable income to the employee as if he or she had received a cash payment.

The new regulations affect all plans or arrangements that allow employees to pay for medical and other permitted benefits with pre-tax dollars, including health and dependent care flexible spending accounts (“FSAs”). If your business has any of these types of arrangements, it must have a written plan document, and it is important that the document be reviewed soon so that, if necessary, it can be brought into compliance with the new regulations prior to the Plan Year beginning in 2009.

In the past, cafeteria plans have generally escaped IRS scrutiny. This may change once the rules are finalized so we recommend that employers review their plan documents and administrative procedures with benefits counsel. If you would like us to draft a Cafeteria Plan document or review your Cafeteria Plan document as described above, please contact one of the attorneys in our Employee Benefits Section.

PULLMAN & COMLEY, LLC
ATTORNEYS AT LAW

850 MAIN STREET
P.O. BOX 7006
BRIDGEPORT, CT 06601-7006

WWW.PULLCOM.COM

50 Main Street White Plains, NY 10606-1900 p 914 682 6895 f 914 682 6894

WHITE PLAINS

253 Post Road West P.O. Box 3180 Westport, CT 06880-8180 p 203 254 5000 f 203 254 5070

WESTPORT

300 Atlantic Street Stamford, CT 06901-3522 p 203 324 5000 f 203 363 8659

STAMFORD

90 State House Square Hartford, CT 06103-3702 p 860 424 4300 f 860 424 4370

HARTFORD

850 Main Street P.O. Box 7006 Bridgeport, CT 06601-7006 p 203 330 2000 f 203 576 8888

BRIDGEPORT

PULLMAN & COMLEY, LLC
ATTORNEYS AT LAW