



Health Savings Accounts: Employer Comparable Contributions

Many employers offer high deductible health plans (HDHPs) to control premium costs and pair this coverage with health savings accounts (HSAs) to help employees with their health care expenses. An HSA is a tax-exempt trust or custodial account that can be contributed to by, or on behalf of, an eligible individual for the purpose of paying qualified medical expenses.

Employers are not required to contribute to the HSAs of their employees. However, if an employer makes contributions to any employee's HSA outside of a cafeteria plan, the employer must make comparable contributions to the HSAs of all comparable participating employees. As a general rule, contributions are comparable if they are the same dollar amount or the same percentage of the HDHP deductible. An employer that fails to comply with comparability requirements may be liable for excise taxes.

This Compliance Overview provides general guidance for complying with the comparability rules when making contributions to employees' HSAs.

HSA OVERVIEW

If an employer makes contributions to any employee's HSA outside of a cafeteria plan, the employer must make comparable contributions to the HSAs of all comparable participating employees.

HSAs provide the following trio of federal tax advantages: HSA contributions are not taxed; HSA funds, including interest and other earnings, accumulate tax-free; and amounts distributed from an HSA for qualified medical expenses are not taxed.

To be eligible to contribute to an HSA (or to receive HSA contributions), an individual must meet specific eligibility criteria. For example, an individual must be covered by a qualifying HDHP and must not have any impermissible non-HDHP coverage. An individual's eligibility for HSA contributions is generally determined monthly, as of the first day of the month.

HSA contributions can be made by the HSA accountholder or by any other person on his or her behalf, including an employer or family member. An individual who is no longer HSA-eligible may still contribute to his or her HSA (or have contributions made on his or her behalf) for the months of the year in which he or she was HSA-eligible.

If an employer fails to comply with the comparability requirement during a calendar year, it will be liable for an excise tax equal to **35 percent** of the aggregate amount contributed by the employer to the HSAs of its employees during that calendar year. As a general rule, HSA contributions are comparable if they are the same dollar amount or the same percentage of the HDHP deductible.

COMPARABLE PARTICIPATING EMPLOYEES

Comparable participating employees are HSA-eligible individuals who are in the **same category of employees** and have the **same category of HDHP coverage**.

Categories of Employees

Non-collectively bargained employees can be separated into three categories for comparability testing:

Current full-time employees	Current part-time employees	Former employees
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These are the only **categories of employees** for comparability testing. An employer is not allowed to create any additional categories. For example, an employer cannot create separate categories of employees based on their salaried or hourly status for purposes of comparability testing.

However, some employees are **not** considered comparable participating employees, and are therefore not taken into account for purposes of comparability testing. For example, employees who are not HSA-eligible are not considered comparable participating employees. In addition, former employees who have elected COBRA coverage under the employer's HDHP are not included for purposes of comparability testing.

There are also exceptions for collectively bargained employees and highly compensated employees:

Collectively Bargained Employees	Employees who are included in a unit of employees covered by a bona fide collective bargaining agreement between employee representatives and one or more employers are not comparable participating employees, if health benefits were the subject of good-faith bargaining between the employee representatives and the employer(s). Collectively bargained employees are, therefore, disregarded for purposes of comparable contribution requirements.
Highly Compensated Employees	For purposes of making a contribution to the HSA of an employee who is not a highly compensated employee (as defined by the IRS), highly compensated employees are not treated as comparable participating employees. This makes it possible for an employer to make greater HSA contributions to employees who are not considered highly compensated without failing to meet the comparable contribution requirement. However, an employer is still required to make comparable contributions to the HSAs of all HCEs who are comparable participating employees and to the HSAs of all non-HCEs who are comparable participating employees. Also, within a group of comparable participating employees, an employer is not allowed to make larger contributions to HCEs than to non-HCEs.

Categories of HDHP Coverage

There are four categories of coverage for purposes of comparability testing:

Self-only	Self-plus-one	Self-plus-two	Self-plus-three or more
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Employees with self-only HDHP coverage are tested separately from employees with family HDHP coverage. Similarly, employees with different categories of family HDHP coverage may be tested separately. An employer is not required to contribute the same amount or the same percentage of the deductible for employees who are eligible individuals with one category of HDHP coverage that it contributes for employees who are eligible individuals with a different category of HDHP coverage.

For example, an employer that satisfies the comparability rules by contributing the same amount to the HSAs of all employees who are eligible individuals with family HDHP coverage is not required to contribute any amount to the HSAs of employees who are eligible individuals with self-only HDHP coverage, or to contribute the same percentage of the self-only HDHP deductible as the amount contributed with respect to family HDHP coverage.

However, there is a special comparability rule with respect to family coverage. Under this rule, an employer's contribution with respect to the self-plus-two category may not be less than the employer's contribution with respect to the self-plus-one category, and the employer's contribution with respect to the self-plus-three or more category may not be less than the employer's contribution with respect to the self-plus-two category.

Employer-provided HDHP Coverage

An employer may restrict its HSA contributions to comparable participating employees who are participating in the employer's own HDHP without violating the comparability rules. Thus, an employer that contributes only to the HSAs of employees who are eligible individuals with coverage under the employer's HDHP is not required to make comparable contributions to the HSAs of employees who are eligible individuals but who are not covered under the employer's HDHP.

However, an employer that contributes to the HSA of any employee who is an eligible individual with coverage under an HDHP that is not provided by the employer must make comparable contributions to the HSAs of all comparable participating employees, regardless of whether they are covered under the employer's HDHP.

EXCEPTION FOR CAFETERIA PLAN CONTRIBUTIONS

The comparability rules do not apply to employer HSA contributions made through a cafeteria plan.

Employer contributions to employees' HSAs are made through a cafeteria plan, if, under the written cafeteria plan, the employees have the right to elect to receive cash or other taxable benefits in lieu of all or a portion of an HSA contribution (that is, all or a portion of the HSA contributions are available as pre-tax salary reduction amounts), regardless of whether an employee actually elects to contribute any amount to the HSA by salary reduction. Thus, employer HSA contributions are made through a cafeteria plan if the cafeteria plan allows employees to make pre-tax salary reductions to fund their HSAs.

COMPARABLE CONTRIBUTIONS TO FORMER EMPLOYEES

An employer making comparable contributions to former employees must take reasonable actions to locate any missing comparable participating former employees. In general, reasonable actions include the use of certified mail, the IRS Letter Forwarding Program or the Social Security Administration's Letter Forwarding Program.

COMPARABILITY TESTING ISSUES

Eligible Employees without HSAs

If an HSA-eligible employee has not established an HSA at the time the employer makes its HSA contributions, the employer will comply with the comparability rules by contributing comparable amounts, plus reasonable interest, to the employee's HSA when the employee ultimately establishes the HSA. Employers must take into account each month during the calendar year that the employee was a comparable participating employee.

If an eligible employee fails to establish an HSA by Dec. 31 (or fails to notify the employer by Dec. 31 that he or she has opened an HSA), an employer must comply with notice and contribution requirements to satisfy the comparability rules. The notice must be provided no earlier than 90 days before the employer makes its first HSA contribution for the calendar year and no later than Jan. 15 of the following year. It must inform an employee that if he or she establishes an HSA and notifies the employer by the end of February, he or she will receive a comparable contribution for the prior year. The employer's contribution must be made by April 15 and must include reasonable interest.

Whether an employer's interest rate is reasonable is determined based on all of the facts and circumstances. However, if an employer calculates interest using the federal short-term rate, the employer is deemed to use a reasonable interest rate.

Accelerated HSA Contributions

Under the comparability rules, employers may accelerate part or all of their contributions for the entire year to the HSAs of employees who have incurred qualified medical expenses exceeding the employer's cumulative HSA contributions at that time. The contributions must be available on an equal and uniform basis to all eligible employees throughout the calendar year. Employers must further establish reasonable uniform methods and requirements for acceleration of contributions and the determination of medical expenses.

LINKS AND RESOURCES

- IRS [Final Regulation](#) on employer comparable contributions to employees' HSAs
- IRS [Publication 969](#) on HSAs and other tax-favored health plans

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.