

# Client Alert

LABOR, EMPLOYMENT AND BENEFITS PRACTICE GROUP | JUNE 2011

WIGGIN AND DANA

*Counsellors at Law*

## *Certain Cafeteria Plans Require Amendment by June 30, 2011*

Under the Patient Protection and Affordable Care Act, flexible spending accounts (FSAs) may not be used to reimburse expenses incurred after December 31, 2010, for over-the-counter drugs or medicines (other than insulin) purchased without a prescription.

Because of this change from prior law, FSAs and related cafeteria plans must be amended if their governing documents allow for reimbursement of over-the-counter drugs or medicines (other than insulin) obtained without a prescription. Generally, cafeteria plan amendments must be adopted prospectively, but the IRS is permitting employers to amend their cafeteria plans for this provision retroactive to January 1, 2011, *as long as the amendment is adopted by June 30, 2011*.

Many employers have already amended their plans to address this change in the law, or have plans that do not need to be expressly amended. But, given the pending deadline, now is the time to check whether your plan documents are in compliance. If your company's plan documents are provided by a third party administrator (TPA) or other vendor, you should contact the vendor regarding any necessary amendments. Benefits attorneys at Wiggin and Dana are also available to help you review your plan documents.

It is important to note that the new law does not prohibit reimbursement of expenses for the purchase of items that are not medicines or drugs. For example, funds from an FSA can still be used for the purchase of equipment and diagnostic devices.

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