

HSA Employer Comparability Worksheet

Purpose: Use this form to gain an understanding of the “comparability” rules for employer contributions. Employers subject to comparability testing (section 1) are required to treat like employees (section 2) similarly (section 3). Employers are responsible for properly determining whether the HSA contributions meet the rules. This worksheet is a tool to aid you in that effort, but it is not tax or legal advice. If you have any questions, please consult with your tax or legal counsel. See the back of this form for details (p.2).

1 Are You Subject to Comparability Testing?

You are only subject to the comparability rules if you make pre-tax contributions for your employees outside of a Section 125 Cafeteria plan. i.e. If you answer “Yes” to the following questions.

- a. Do you offer or plan to offer pre-tax HSA contributions? Yes No
- b. Will you make the HSA contributions outside of a Section 125 plan? Yes No

Not Subject to HSA Comparability Testing

2 Have You Properly Categorized Employees?

Employers are allowed to treat different “categories” of employees differently for HSAs contributions. See Table for categories and p. 2 for details on categories. Employers must treat employees within the same category “comparably” – see section 3 below.

Allowed Categories of Employees		Not Allowed Categories - Samples
1. Part time v. Full time	5. Single HDHP coverage v. Family HDHP coverage. Plus categories of Self +1, Self +2, and Self +3 or more Cannot decrease contribution - see back for details	Management employees v. Non-management, but see non-highly compensated employee exception
2. Current v. Former		
3. HSA eligible v. Not eligible	6. Employer provided HDHP v. Other HDHP	Age based
4. Union v. Non-union	7. Non-highly compensated employees – see back!	Wellness plan participation based

3 Are You Making Comparable Contributions?

You must make “comparable” contributions to employees falling within the same categories from Step 2. Special rules for Self+ categories – on back

- a. **Amount.** Contributions are “comparable” if they are the same dollar amount (Example 1) or same percentage of the deductible for the HDHP (Example 2). Employers offering multiple plans with multiple deductibles may result in multiple HSA contribution amounts.
- b. **Timing.** Employers can pre-fund HSA contributions, fund periodically, or fund at the end of the year. Pre-funding does not result in comparability violations if an employee separates from service. Periodic funding results in employees receiving different contribution amounts based on number of eligible periods (Example 3). Employers may also use a “look back” method (Example 4).
- c. **Testing Period.** The testing period is the calendar year.

Example 1 Employer contributes \$1,000 on behalf of all employees with individual HDHP coverage. This meets the comparability test.

Example 2 Employer offers two different HDHP plans with different deductibles. Plan A with \$2,000 deductible and Plan B with a \$2,500 deductible. The employer can contribute either the same amount to those covered under Plan A and B, say \$1,000, or the same percentage of the deductible, for example, \$1,000 (50%) for Plan A enrollees and \$1,250 (50%) for those in Plan B.

Example 3 Employer contributes \$100 per month to each employee who is eligible. In March, Jane quits after receiving \$300 to her HSA. Employer stops additional contributions for Jane. In June, Sara begins employment. In July, employer begins contributing \$100 per month for Sara and contributes a total of \$600. Ted worked for employer the entire year and received \$1,200 in HSA contributions. Employer made comparable contributions.

Example 4 Same facts as Example 3, except that the employer waits until the end of the year to contribute rather than on a month-to-month basis. This meets the test. Note: the employer may have to pay employees that left.

35% Penalty for Failure To Comply.

The penalty for failure to comply with the comparability rules is 35% of the aggregate HSA contributions by the employer.

Example Consider an employer that wrongly contributed \$1,000 to 10 employees and only \$500 to another 10 employees. That’s a total HSA contribution of \$15,000 x 35% = a potential fine of \$5,250.

HSA Employer Comparability Worksheet – Additional Detail

This worksheet is based on Final Regulations issued by the Internal Revenue Service ([IRS 26 CFR Part 54](#)).

- 1. Are You Subject to Comparability Testing?** Employers that do not make employee contributions are not subject to comparability testing. Employee pre-tax payroll deferral contributions are considered “employer contributions” for the purposes of comparability testing.
 - a) Section 125 Cafeteria Plan.** Employers making contributions through a Section 125 Cafeteria plan are not subject to HSA comparability testing. Section 125 plans; however, have their own non-discrimination testing procedures to ensure you treat employees fairly.
 - b) After-Tax Contributions.** Employers allowing employees to request that the employer deduct after-tax amounts from the employee’s compensation (payroll) and forward these amounts as employee contributions to an HSA are not subject to the comparability rules because the employer is not making employer contributions.
- 2. Have You Properly Categorized Employees?** Employers are only allowed to categorize employees in a limited number of methods for the purpose of making different HSA contributions to different categories. Listed below are more details on common categories and whether or not they are permissible categories. Seek professional help for categories not listed or for more detailed questions.
 - a) Part-Time Versus Full-Time.** Part time employees are customarily employed for fewer than 30 hours per week and full-time employees are customarily employed for 30 or more hours. It is permissible to make different HSA contributions to part-time employees.
 - b) Former Employees.** An employer is allowed to treat current employees differently than former employees. “Former employees” does not include former employees with coverage under the employer’s HDHP because of an election under a COBRA continuation provision. An employer is not required to make comparable contributions to a former employee with coverage under COBRA.
 - c) Employer Provided HDHP.** It is permissible for an employer to contribute only to employees that are covered through the employer provided HDHP. Accordingly, the employer would not have to make an HSA contribution to an employee that is an eligible employee but not covered through the employer provided HDHP. However, an employer that contributes to the HSA of any employee who is an eligible individual, regardless of the HDHP coverage, must make comparable contributions to the HSAs of all comparable participating employees, even those with coverage under a non-employer provided HDHP.
 - d) Family HDHP and Single HDHP.** Employers may treat employees covered under family coverage different than single coverage.
 - e) Family HDHP and Self +1, +2 and +3 or More.** If the “family” HDHP choice has sub-options, additional rules apply. The sub-options allowed are Self +1, Self +2 and Self +3 or more. If more than one category exists that cover the same number of individuals, all such categories are treated as one for the purpose of comparability testing. An employer may make different HSA contribution amounts to these sub-categories; PROVIDED THAT, the contribution with respect to the self +2 category may not be less than the contribution with respect to the self +1 category and the contribution with respect to the self +3 or more category may not be less than the contribution with respect to the self +2 category. See the regulation for examples, or give us a call.
 - f) Collectively Bargained Employees.** Collectively bargained employees covered by a bona fide collective bargaining agreement are not subject to the comparability rules provided that health care benefits were the subject of good faith negotiation. This includes the ability to treat separate collective bargaining units differently. See the regulations for more details and examples.
 - g) Both Spouses Employees.** If the employer makes contributions only to the HSAs of employees who are eligible individuals covered under its HDHP, the employer is not required to contribute to the HSAs of both employee-spouses when both spouses are covered under one spouse’s family insurance coverage provided through the employer.
 - h) Management Versus Non-Management.** This is not a permissible category. If management employees and non-management employees are comparable participating employees, the employer must make comparable contributions to the management and non-management employees. Some employers provide different medical coverage to management and non-management employees. Differentiating based on coverage is permissible. For example, an employer maintains a HDHP for management employees only and not for non-management employees. The employer makes a \$1,000 contribution to the HSA of its management employees and no contribution to its non-management employees not covered under its HDHP. The employer meets the comparability rules.
 - i) Non-Highly Compensated Employees.** An employer is allowed to make larger HSA contributions for non-highly compensated employees than *highly compensated employees*. The definition for highly compensated employee includes any employee (1) who was a 5% owner at any time during the year or the preceding year, or (2) for the preceding year (A) had compensation from the employer in excess of \$110,000 (for 2011) or (B) if elected by the employer, was in the group consisting of the top-20 percent of employees ranked based on compensation. For example, an employer may make a \$1,000 HSA contribution to each non-highly compensated employee without making a contribution for its highly compensated employees.
 - j) Age.** An employer is not allowed to discriminate in making HSA contributions based on age. For example, an employer could not add \$1,000 to all employees over the age 55 for the catch-up contribution.
 - k) Independent Contractors.** The employer does not need to make contributions on behalf of independent contractors for comparability.
 - l) Participation in Wellness Program.** An employer is not allowed to categorize employees by employees’ participation in health assessments, disease management programs, or wellness programs.
 - m) Seasonal Employees.** Employers must make comparable contributions to employees that work full-time for less than the entire calendar year. The rules are satisfied if the contribution amount is comparable when determined on a month-to-month basis.
- 3. Other Considerations**
 - a) Control Group.** In some situations, multiple companies are treated as a single employer for comparability testing. The law and IRS regulations require this to prevent companies from circumventing non-discrimination rules by forming multiple corporations. Seek professional help for determining how the control group rules apply. See IRC Section 4980G(b) and 4980E(e), 414(b), (c), (m), and (o).
 - b) Sole Proprietor.** A sole proprietor may contribute to his or her own HSA without contributing to the HSAs of employees. A sole proprietor is not considered an employee. If a sole proprietor does contribute on behalf of employees, he or she must make comparable contributions; however, contributions that a sole proprietor makes to his or her own HSA are not taken into account.
 - c) Partnership.** Partners follow the same rule as sole proprietors in that they are not considered employees.
 - d) Employee Fails to Open HSA.** If an employee fails to establish an HSA at the time the employer funds its employees’ HSA, the employer complies with the comparability rules by contributing comparable amounts to the employee’s HSA when the employee establishes the HSA, taking into account each month that the employee was a participating employee, plus interest.
 - e) Medical Savings Accounts.** The comparability rules apply separately to employees who have HSAs and employees who have Archer MSAs. If an employee has both an HSA and an MSA, the employer may contribute to either the HSA or the Archer MSA, but not both.