Dependent Care Flexible Spending Account Program (DepCare FSA) for Academic Student Employees and Graduate Student Researchers -- Implementation January 2009

Background

The most recent collective bargaining agreement between the University and UAW, which represents UC Academic Student Employees (ASEs), established the following Child Care reimbursement provision:

"Effective January 1, 2009, all ASEs shall be entitled to participate in the UC Dependent Care Reimbursement Program. The terms of this plan shall be determined by UC in accordance with Internal Revenue Service regulations."

Action Necessary

The University's Dependent Care Flexible Spending Account Program (DepCare FSA) is being expanded to allow ASEs, as well as Graduate Student Researcher (GSR) employees, to participate in the program under the same terms as other eligible employees. Continuation of the program beyond September 30, 2009 for ASEs is subject to collective bargaining.

Eligibility for DepCare FSA

An ASE or a GSR with an approved title code and an eligible appointment at 43.75% time or greater may enroll in the program. An ASE or GSR with multiple appointments is eligible if the combined eligible appointments equal at least 43.75%.

Note: An ASE may also be eligible for the *ASE Child Care Reimbursement Program*, a separate program effective 7/1/08.   GSRs are ***not*** eligible for the *ASE Child Care Reimbursement Program.*

Enrollment in DepCare FSA

Newly hired ASEs and GSRs have a 31-day period of initial eligibility (PIE) to enroll in the DepCare FSA beginning with their date of hire. The employee may have additional PIEs during the calendar year if they experience a change in family status or employment status.

Enrollment in the DepCare FSA must be elected each calendar year and must be prospective from the date of the election. Current ASEs and GSRs may enroll for the 2009 plan year beginning January 1, 2009. The enrollment period will last 31 days, until January 31, 2009. Typically, if the employee's enrollment is received and processed by January 15, the first day that deductions may be taken (and thus the first day the ASE/GSR is eligible to incur expenses for reimbursement) is February 1, 2009. Depending on the date the enrollment form is submitted and processed, the date for the first deduction could be March or later.

Should participation in the plan continue beyond September 30, 2009 for ASEs, information for enrollment for the 2010 plan year will be announced.

Procedures and Processes

ASE/GSR Employee

1. ASE/GSR can access information on the DepCare FSA plan from the Human Resources Benefits At Your Service (AYS) web site (http://atyourservice.ucop.edu/employees/health_welfare/depcare_hcra/ase/)

2. ASE/GSR should read and understand all benefits and potential risks prior to enrollment in the DepCare FSA. This is a pre-tax account regulated by the Internal Revenue Code (IRC) – funds not used are forfeited. This is a *"use it or lose it"* account.

3. The ASE/GSR completes the DepCare FSA enrollment form (UPAY 919, posted online) and submits the form to the appropriate campus office for processing. ASEs/GSRs may consult their hiring department to determine the appropriate processing office (Payroll or Benefits Office) at their campus location.

4. ASE/GSR will follow all claim procedures for the DepCare FSA, per information provided by the University's current third party administrator, CONEXIS, and in the Dependent Care Flexible Spending Account Summary Plan Description.

5. Reimbursement for eligible expenses will be made to the ASE/GSR directly from the third party vendor, CONEXIS, via check mailed directly to the employee or direct deposit to employee's bank account if the employee elects this option.

6. ASEs who may also be eligible for the Child Care Reimbursement Program may not request reimbursement for the same expense from both the ASE Child Care Reimbursement Program and the DepCare FSA. The third party administrator's reimbursement form requires an employee to certify that the expense is not being claimed under any other program.

Designated Campus Administrative Office

1. The responsible campus office will assign an eligible ASE/GSR to a BELI 5 (no benefits) with a BELI Status Qualifier Code of 25. This will identify the ASE/GSR as eligible only for the DepCare FSA benefit and no other benefits.

2. The responsible campus office should provide information on the DepCare FSA to eligible employees on or before the date their PIE begins. Additionally, ASEs/GSRs should be made aware of a campus resource that can address questions they may have about the DepCare FSA. The ASE/GSR should read and understand all benefits and potential risks prior to enrollment in the DepCare FSA. This is a pre-tax account regulated by the IRC – funds not used are forfeited. This is a *"use it or lose it"* account.

3. The responsible campus office will need to process the employee's enrollment form using the ERET screen. The DepCare FSA annual amount, monthly amount and effective date will need to be entered.

UCOP (Human Resources & Benefits)

1. A UCOP AYS website explaining the ASE/GSR DepCare FSA will be available at http://atyourservice.ucop.edu/ase. The website will include general information and Frequently Asked Questions for the DepCare FSA. Campus Offices may provide a direct link to this website from local sites.

Administrative Questions & Answers

1. **Because the employee may receive a new appointment more than once in a given year, he/she may potentially be eligible to sign up for the DepCare FSA more than once. Who keeps track to make sure that the annual limit of $5,000 per plan year has not been exceeded?**

   PPS maintains the YTD annual limit and that will ensure the employee does not exceed that limit. Current UC Group Insurance and IRC Regulations define whether the annual contribution can be changed due to a new appointment.

2. **If ASEs or GSRs work in the spring and the fall quarter, do they have to keep the same monthly deduction amount or can they change their monthly and/or annual contribution amount?**

   It will depend on the length of time between the appointments. If the employee is rehired or reappointed within less than 120 days within the same plan year, enrollment is limited to the monthly salary reduction agreement in effect at the time of termination (end of eligible appointment). However, if the employee has a change in family or employment status during the break in service, he or she may potentially make a change in the contribution amount depending on the type of status change.

   If the employee is rehired or reappointed with a break in service of more than 120 days, the employee is treated as a newly eligible employee.

3. **What will be the termination date of DepCare FSA coverage? How is it related to the end date of the employee's appointment? How is it related to the last deduction?**

   Employees' monthly contributions continue only as long as they remain on active pay status and are otherwise eligible. When the appointment ends or eligibility ceases, participation in the plan generally ends at the end of the pay period in which their last DepCare FSA contribution is deducted from their paycheck. The employee may submit claims for eligible expenses incurred through the last day of participation in the plan. For example, if the employee is paid monthly and the appointment ends in one month, the last DepCare FSA contribution is taken from earnings that generally are payable the first day of the following month and their participation in DepCare FSA ends on the last day of the second month .

Questions & Answers for ASEs and GSRs

1. **How does this program work?**

   This program is mainly a pretax deduction program for employees with dependent care (child care, spousal or parental care) needs. Basically, employees ask the University to deduct an amount, determined by the employee, from their monthly paycheck on a pre-tax basis. Then employees submit documentation for the dependent care expenses that they have incurred and the University's DepCare FSA third party administrator submits reimbursement to the employee. The only benefit is in tax savings. Participants must be careful about the amount they set aside, because any funds they don't use are forfeited – i.e. "use it or lose it."

2. **When the DepCare FSA becomes available to ASEs in January 2009 will the $5,000 DepCare limit be reduced by amounts reimbursed under the ASE Child Care Reimbursement program (which is found under the same article of the contract)?**

   No. Reimbursements paid to ASEs under the Child Care Reimbursement Program are treated as additional wages; such reimbursements will not reduce the maximum pre-tax amount that can be deducted from the employee's paycheck under the DepCare FSA. Expenses cannot be claimed under both programs.

3. **If GSRs can participate in the DepCare FSA, can they participate in the Child Care Reimbursement Program for ASE?**

   No. Article 4 of the University of California's ASE collective bargaining agreement with the UAW established a child care reimbursement provision for exclusively represented Academic Student Employees.

4. **If the spouse of the ASE/GSR is unemployed, may the employee participate in DepCare FSA?**

   Generally, no. If the employee's spouse is capable of self-care, unemployed and is not a full-time student, the employee may not be eligible to participate in the DepCare FSA plan. The employee should consult a tax advisor before enrolling.

5. **Can I claim the child care credit on my tax form if I participate in the DepCare FSA or ASE Child Care Reimbursement Program?**

   For information on the impact of enrollment in the DepCare FSA on potential child care tax credits, see the DepCare FSA Summary Plan Description. Regarding the Child Care Reimbursement Program, even though the reimbursement received under the ASE Child Care Program represents taxable wages to the employees, the amounts paid by the ASE employees for child care services may be allowable for the 'dependent care services' tax credit set forth in Section 21 of the Internal Revenue Code. Unlike programs such as the DepCare FSA that serve to reduce the amount of taxable income against which the tax percentage is applied, a tax credit is a dollar-for-dollar reduction in the taxpayer's tax liability and is therefore significantly more valuable than a reduction in taxable income. Employees should consult with a tax advisor regarding the best option for their particular situation.

Definitions

Qualified Dependent: A qualified dependent under the DepCare FSA is defined by IRC §21 and IRC §129. Qualifying dependents include:

- A child under age 13 in the employee's custody whom the employee can claim as a dependent on his/her tax return;
- A legal spouse (defined under federal tax law) who is physically or mentally incapable of self-care;
- A dependent who lives with the employee – such as a child age 13 or older, parent, sibling, or in-law who is physically or mentally incapable of self-care, and whom the employee can claim as a dependent on his/her tax return.

If the care is provided outside of the employee's home for a spouse, or a dependent age 13 or older, either of whom is incapable of self-care, the spouse or dependent must live in the employee's home at least eight hours each day.

Eligible Expense: Eligible expenses are determined by IRC. A partial list of expenses that meet the requirements include: in-home dependent care; care provided at a day-care center or other location outside of the employee's home; before and after-school care, and summer day camp (if the cost is reasonable compared to other alternatives and the main purpose is to provide for a child's well being). See IRC Publication 503 *Child and Dependent Care Expenses*.

Allowable receipts: The child care provider must have a valid tax ID or social security number. If the center cares for six or more dependents who are not residents, it must comply with all state and local licensing laws and applicable regulations. Child care provided by the spouse, a child of the ASE under age 19, or someone else the ASE claims as a dependent for tax purposes is not reimbursable.