373. Must an employer offering Health Savings Accounts (HSAs) to its employees contribute the same amount for each employee?

An employer offering HSAs to its employees must make comparable contributions to the HSAs for all comparable participating employees for each coverage period during the calendar year.[[1]](#footnote-1) IRC Section 4980G incorporates the comparability rules of IRC Section 4980E by reference.[[2]](#footnote-2)

Comparable contributions are contributions that either are the same amount or the same percentage of the annual deductible limit under a high deductible health plan (HDHP).[[3]](#footnote-3)

Comparable participating employees are all employees who are in the same category of employee and have the same category of coverage.

Category of employee refers to full-time employees, part-time employees, and former employees.[[4]](#footnote-4)

Category of coverage refers to self-only and family-type coverage. Family coverage may be subcategorized as self plus one, self plus two, and self plus three or more. Subcategories of family coverage may be tested separately, but under no circumstances may an employer contribute less to a category of family coverage with more covered persons.[[5]](#footnote-5)

For years beginning after 2006, highly compensated employees are not treated as comparable participating employees to non-highly compensated employees.[[6]](#footnote-6)

**Planning Point**: Employers often want to categorize employees in arrangements other than discussed above and not allowed by the law. Employers may desire to use existing organizational structure and separate employees that work in different locations, different divisions, or have different job descriptions. Employers may desire to reward tenure by categorizing employees based on length of service. Generous employers may want to make the additional $1,000 catch-up contribution for employees over the age 55. Advising employers on this issue is simplified by the IRS’s regulation that states its list is the exclusive list of allowed categories.[[7]](#footnote-7) None of the categories suggested above are permitted categories.

Although not technically categories of employees under the IRS regulations, there are a number of other exceptions that may prove helpful for employers. Employees that are members of a union are not considered comparable employees provided that health benefits were the subject of good faith bargaining between the union and the employer.[[8]](#footnote-8) Employees that are not eligible for an HSA are not comparable employees.[[9]](#footnote-9) Employers can limit comparable HSA contributions to employees that receive their HDHP coverage through the employer[[10]](#footnote-10)Employers may also elect to make the HSA contribution to employees that are HSA eligible but obtained HDHP coverage outside of the employer provided the employer treats similar employees comparably. HSA contributions to sole proprietors, more than 2% owners of an S-Corporation and partners in a partnership are generally not treated as comparable HSA contributions.[[11]](#endnote-1)

Employer contributions made to HSAs through a cafeteria plan, including matching contributions, are not subject to comparability rules but are subject to IRC Section 125 nondiscrimination rules ([Q 3504](http://pro.moss.nuco.com/taxfacts2015/tfempb/p2-cafplan/ingen/Pages/3504-00-TF1.aspx)).[[12]](#footnote-11)

An employer may make contributions to the HSAs of all eligible employees at the beginning of a calendar year; it may contribute monthly on a pay-as-you-go basis; or it may contribute at the end of a calendar year, taking into account each month that an employee was a comparable participating employee. An employer must use the same contribution method for all comparable participating employees.[[13]](#footnote-12)

If an employer does not prefund HSA contributions, regulations provide that it may accelerate all or part of its contributions for an entire year to HSAs of employees who incur, during the calendar year, qualified medical expenses exceeding the employer’s cumulative HSA contributions to date. If an employer permits accelerated contributions, the accelerated contributions must be available on a uniform basis to all eligible employees under reasonable requirements.[[14]](#footnote-13)

To deal with employees who may not have established an HSA at the time an employer makes contributions, regulations require employers to provide to each eligible employee by January 15 a written notice that if the employee, by the last day of February, both establishes an HSA and notifies the employer that he or she has done so, the employee will receive a comparable contribution to the HSA for the prior calendar year. The written notice may be delivered electronically. For each eligible employee that notifies an employer that he or she has established an HSA, the employer must, by April 15, make comparable contributions, taking into account each month that an employee was a comparable participating employee, plus reasonable interest.[[15]](#footnote-14)

There is a maximum contribution permitted for all employees who are eligible individuals during the last month of the taxable year. An employer may contribute up to the maximum annual contribution amount for the calendar year based on the employees’ HDHP coverage to HSAs of all employees who are eligible individuals on the first day of the last month of the employees’ taxable year, including employees who worked for the employer for less than the entire calendar year and employees who became eligible individuals after January 1 of the calendar year. For example, contributions may be made on behalf of an eligible individual who is hired after January 1 or an employee who becomes an eligible individual after January 1.[[16]](#footnote-15)

Employers are not required to provide more than a pro rata contribution based on the number of months that an individual was an eligible individual and employed by the employer during the year. If an employer contributes more than a pro rata amount for a calendar year to an HSA of any eligible individual who is hired after January 1 of the calendar year, or any employee who becomes an eligible individual any time after January 1 of the calendar year, the employer must contribute that same amount on an equal and uniform basis to HSAs of all comparable participating employees who are hired or become eligible individuals after January 1 of the calendar year.[[17]](#footnote-16)

Likewise, if an employer contributes the maximum annual contribution amount for the calendar year to an HSA of any eligible individual who is hired after January 1 of the calendar year or any employee who becomes an eligible individual any time after January 1 of the calendar year, the employer also must contribute the maximum annual contribution amount on an equal and uniform basis to HSAs of all comparable participating employees who are hired or become eligible individuals after January 1 of the calendar year.[[18]](#footnote-17)

An employer who makes the maximum calendar year contribution or more than a pro rata contribution to HSAs of employees who become eligible individuals after the first day of the calendar year or to eligible individuals who are hired after the first day of the calendar year will not fail to satisfy comparability merely because some employees will have received more contributions on a monthly basis than employees who worked the entire calendar year.[[19]](#footnote-18)

1. . IRC Secs. 4980E, 4980G. [↑](#footnote-ref-1)
2. . Treas. Reg. § 54.4980G-1, A-1. [↑](#footnote-ref-2)
3. . IRC Sec. 4980E(d)(2); Treas. Reg. § 54.4980G-4, A-1. [↑](#footnote-ref-3)
4. . Treas. Reg. § 54.4980G-3, A-5. [↑](#footnote-ref-4)
5. . IRC Sec. 4980E(d)(3); Treas. Reg. §§ 54.4980G-1, A-2, 54.4980G-4, A-1. [↑](#footnote-ref-5)
6. . IRC Sec. 4980G(d), as added by TRHCA 2006. [↑](#footnote-ref-6)
7. Treas. Reg. § 54.4980G-3, A6 [↑](#footnote-ref-7)
8. Treas. Reg. § 54.4980G-4, A1 [↑](#footnote-ref-8)
9. Treas. Reg. § 54.4980G-3, A7. [↑](#footnote-ref-9)
10. IRS Notice 2004-50, A84; IRS Notice 2005-8. [↑](#footnote-ref-10)
11. [↑](#endnote-ref-1)
12. . Notice 2004-50, 2004-2 CB 196, A-47; IRC Sec. 125 (b), (c), and (g); Treas. Reg. § 1.125-1, A-19. [↑](#footnote-ref-11)
13. . IRC Sec. 4980E(d)(3); Treas. Reg. §§ 54.4980G-4, A-4. [↑](#footnote-ref-12)
14. . IRC Sec. 4980E(d)(3); Treas. Reg. §§ 54.4980G-4, A-15. [↑](#footnote-ref-13)
15. . IRC Sec. 4980E(d)(3); Treas. Reg. §§ 54.4980G-4, A-14. [↑](#footnote-ref-14)
16. . Treas. Reg. §54.4980G-4. [↑](#footnote-ref-15)
17. . Treas. Reg. §54.4980G-4. [↑](#footnote-ref-16)
18. . Treas. Reg. §54.4980G-4. [↑](#footnote-ref-17)
19. . Treas. Reg. §54.4980G-4. [↑](#footnote-ref-18)