**376.03 What are the employer responsibilities regarding employee HSAs?**

If an employer offers pre-tax employer contributions, then the employer has the following responsibilities:

1. *Make Comparable Contributions.* If the employer is making a pre-tax employer contribution (non-payroll deferral), it must do so on a comparable basis.[[1]](#endnote-1) (see Q 373).
2. *Maintain Section 125 Plan for Payroll Deferral.* If the employer allows pre-tax payroll deferral, then the employer must adopt and maintain a Section 125 plan that provides for HSA deferrals.[[2]](#endnote-2) This includes collecting employee deferral elections, sending the deferred amount directly to the HSA custodian, and accounting for the money for tax-reporting purposes.
3. *HSA Eligibility and Contribution Limits.* Employers should work with employees to determine eligibility for an HSA and the employee’s HSA contribution limit. Although it is legally the employee’s responsibility to determine his or her eligibility beyond HDHP coverage and contribution limit, a mistake in HSA contribution limits generally involves work by both the employer and the employee to correct. Mistakes are best avoided by upfront communication. Also, the employer does have some responsibility not to exceed the known federal limits. An employer may not know if a particular employee is ineligible for an HSA due to other health coverage, but an employer is expected to know the current HSA limits for the year and not exceed those limits.[[3]](#endnote-3)
4. *Tax Reporting.* The employer needs to properly complete employees’ W-2 forms[[4]](#endnote-4) and its own tax-filing regarding HSAs. HSA employer contributions are generally deductible.[[5]](#endnote-5)
5. *Business Owner Rules.* Business owners (sole proprietors, partners in a partnership or LLC, and more than 2% owners of an S-Corp.) are generally not treated as employees and employers need to review HSA contributions for business owners for proper tax reporting.
6. *Detailed Rules.* There are various detailed rules that fall within the responsibility of the employer that are too numerous to list here but include items such as: (1) holding employer contributions for an employee that fails to open an HSA[[6]](#endnote-6), (2) not being able to “recoup” money mistakenly made to an employee’s HSA[[7]](#endnote-7), (3) actually making employer HSA contributions into employees HSAs on a timely basis, (4) educating employees on HSAs (not legally required but necessary for a successful program), and (5) other detailed rules.
1. Treas. Reg. Sec. 54.4980. [↑](#endnote-ref-1)
2. IRC Sec. 125. [↑](#endnote-ref-2)
3. IRS Notice 2004-50, A82. [↑](#endnote-ref-3)
4. IRS Notice 2004-2, A34 (W-2 reporting only). [↑](#endnote-ref-4)
5. IRC Sec 106. [↑](#endnote-ref-5)
6. Treas. Reg. Sec 54.4980G-4, A7. [↑](#endnote-ref-6)
7. IRS Notice 2004-50, A82. [↑](#endnote-ref-7)