

Nondiscrimination Testing

What is nondiscrimination testing?

In order to retain tax-favored status, the IRS Code requires that section 125, 105(h) and 129 plans pass a series of nondiscrimination test each year. The plans must not discriminate in favor of highly compensated employees (HCEs) and/or key employees with respect to the benefits provided under the plans or their eligibility to participate in these plans. In order to document compliance, annual testing must be performed, and the results documented. The results are subject to audit by the IRS.

Benefit Strategies is pleased to offer nondiscrimination testing to assist in the administration of your plans. Generally, if testing is done early in the plan year, any necessary election changes can be ascertained immediately. However, if pre-testing is not an available option for your organization, mid-to-late plan year tests are still beneficial.

What tests are included?

The IRS outlines tests that each type of plan must pass in order to retain tax-favored status. Benefit Strategies offers testing for medical/dental premium plans, general and limited purpose flexible spending accounts (FSAs,) and dependent care spending accounts. Health Reimbursement Arrangement (HRA) testing is also available upon request.

- **Eligibility Test:** This test compares the relative portion of non-highly compensated employees benefited by the plan with the portion of highly compensated employees benefited.
- **Contributions & Benefits Test (also called the Utilization Test):** A plan must give each participant equal opportunity to select non-taxable benefits. Employer contributions, eligibility rules and waiting periods should be uniform for all participants.
- **Key Employee Concentration Test:** This test compares the ratio of non-taxable benefits provided under the cafeteria plan to key employees to the non-taxable benefit provided to all employees. The key employees' benefit must not exceed 25% of the total coverage provided under the plan to all employees.
- **55% Average Benefit Test (Dependent Care Test):** This test requires that the average dependent care reimbursement account contributions made by non-highly compensated employees must be greater than or equal to 55% of the average contributions made by the highly compensated. This is often considered the most crucial test, as it is the one most often failed by employers.

Instructions to Complete Nondiscrimination Testing

1. Fill out the appropriate questionnaire
2. Fill out the census
3. Submit both the questionnaire and census to compliance@benstrat.com
 - [Testing FAQ](#)
 - [Testing Questionnaire-FSA](#)
 - [Testing Questionnaire-HRA](#)
 - [Census Template](#)

Once your completed questionnaire and census has been submitted, testing will be performed, and the results will be communicated to you via email.

Have Questions?

We've got you covered

Contact our Compliance

team at Compliance@benstrat.com

