

**COUNTY OF MISSOULA FLEXIBLE BENEFITS PLAN**

**PLAN EFFECTIVE DATE:  
JULY 1, 2002**

**REVISED EFFECTIVE JULY 1, 2012**

**EMPLOYER ID NUMBER:  
81-6001397**

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# COUNTY OF MISSOULA FLEXIBLE BENEFITS PLAN

## INTRODUCTION

The Employer has amended this Plan effective July 1, 2012, to recognize the contribution made to the Employer by its Employees. Its purpose is to reward them by providing benefits for those Employees who shall qualify hereunder and their Dependents and beneficiaries. The concept of this Plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs. This Plan is a restatement of a Plan which was originally effective on July 1, 2002. The Plan shall be known as County of Missoula Flexible Benefits Plan (the "Plan").

The intention of the Employer is that the Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits which an Employee elects to receive under the Plan be excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended.

## ARTICLE I DEFINITIONS

1.1 **"Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 9.1 to administer the Plan on behalf of the Employer.

1.2 **"Affiliated Employer"** means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).

1.3 **"Benefit"** or **"Benefit Options"** means any of the optional benefit choices available to a Participant as outlined in Section 4.1.

1.4 **"Cafeteria Plan Benefit Dollars"** means the amount available to Participants to purchase Benefit Options as provided under Section 4.1. Each dollar contributed to this Plan shall be converted into one Cafeteria Plan Benefit Dollar.

1.5 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.6 **"Compensation"** means the amounts received as wages or salary by the Participant from the Employer during a Plan Year.

1.7 **"Dependent"** means any individual who qualifies as a dependent under an Insurance Contract, as defined in the specific Insurance Contract.

For purposes of the Health Flexible Spending Account under Article VI of this Plan, Dependents shall be limited to individuals qualifying as dependents under Code Section 152 (as modified by Code Section 105(b)). Under these requirements, a Participant's Dependent child includes his natural child, stepchild, foster child, adopted child, or a child placed with the Participant for adoption, in each case until such child reaches the limiting age of

26, without regard to student status, marital status, financial dependency or residency status with the Employee or any other person. Coverage for such child will cease at the end of the calendar year in which the child reaches the applicable limiting age.

The phrase "placed for adoption" refers to a child whom the Participant intends to adopt, whether or not the adoption has become final, who has not attained the age of 18 as of the date of such placement for adoption. The term "placed" means the assumption and retention by such Employee of a legal obligation for total or partial support of the child in anticipation of adoption of the child. The child must be available for adoption and the legal process must have commenced.

For purposes of the Dependent Care Flexible Spending Account under Article VII of this Plan, Dependent shall be defined as set forth in Section 7.2 of Article VII.

1.8 **"Effective Date"** means July 1, 2002.

1.9 **"Election Period"** means the period immediately preceding the beginning of each Plan Year as determined by the Administrator. However, an Employee's initial Election Period shall be determined pursuant to Section 5.1.

1.10 **"Eligible Employee"** means any Employee who has satisfied the provisions of Section 2.1, except as follows:

(a) An individual shall not be an "Eligible Employee" if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not "Eligible Employees" and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

(b) Any Employee who is a "part-time" Employee shall not be eligible to participate in this Plan. A "part-time" Employee is any Employee who works, or is expected to work, on a regular basis less than 20 hours a week and is designated as a part-time Employee on the Employer's personnel records.

(c) Any Employee who is classified on the payroll records of the Employer as a "Temporary Employee" shall not be eligible to participate in this Plan.

1.11 **"Employee"** means any person who is employed by the Employer. The term Employee shall include leased employees within the meaning of Code Section 414(n)(2).

1.12 **"Employer"** means County of Missoula and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan.

1.13 **"Grace Period"** means, with respect to any Plan Year, the time period ending on the fifteenth day of the third calendar month after the end of such Plan Year, during which Medical Expenses incurred by a Participant will be deemed to have been incurred during such Plan Year.

1.14 **"Insurance Contract"** means any contract or plan issued by an Insurer underwriting a Benefit provided under this Plan.

1.15 **"Insurer"** means any insurance company that underwrites a Benefit under this Plan or, with respect to any self-funded benefits, the Employer.

1.16 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.

1.17 **"Plan"** means this instrument, including all amendments thereto.

1.18 **"Plan Year"** means, for periods prior to January 1, 2013, the 12-month period beginning July 1 and ending June 30, except that the Plan Year for the period beginning July 1, 2012, shall be a short (6-month) Plan Year, and effective January 1, 2013, the Plan Year shall be the 12-month period beginning January 1 and ending December 31 each year. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.19 **"Premium Expenses" or "Premiums"** mean the Participant's cost for the Benefits described in Section 4.1.

1.20 **"Premium Expense Reimbursement Account"** means the account established for a Participant pursuant to this Plan to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Premiums of the Participant may be paid or reimbursed. If more than one type of insured or self-funded Benefit is elected, sub-accounts shall be established for each type of insured or self-funded Benefit.

1.21 **"Salary Redirection"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.1. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.

1.22 **"Salary Redirection Agreement"** means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.

1.23 **"Spouse"** means the husband or wife of a Participant under a legal, opposite gender marriage, unless legally separated by court decree.

## **ARTICLE II PARTICIPATION**

### **2.1 ELIGIBILITY**

Any Eligible Employee shall be eligible to participate hereunder three (3) months after the initial date of employment with the Employer. Regardless of the preceding, an Eligible Employee shall be eligible to participate hereunder with respect to the Health Flexible Spending Account six (6) month(s) after his initial date of employment with the Employer.

## 2.2 EFFECTIVE DATE OF PARTICIPATION

An Eligible Employee shall become a Participant effective as of the first day of the pay period coinciding with or next following the date on which he met the eligibility requirements of Section 2.1.

## 2.3 APPLICATION TO PARTICIPATE

An Employee who is eligible to participate in this Plan shall, during the applicable Election Period, complete an application to participate in a manner set forth by the Administrator. The election shall be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.4 hereof.

An Eligible Employee shall also be required to complete a Salary Redirection Agreement during the Election Period for the Plan Year during which he wishes to participate in this Plan. Any such Salary Redirection Agreement shall be effective for the first pay period beginning on or after the Employee's effective date of participation pursuant to Section 2.2.

## 2.4 TERMINATION OF PARTICIPATION

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

- (a) **Termination of employment.** The Participant's termination of employment, subject to the provisions of Section 2.6;
- (b) **Change in employment status.** The end of the Plan Year during which the Participant became a limited Participant because of a change in employment status pursuant to Section 2.5;
- (c) **Death.** The Participant's death, subject to the provisions of Section 2.7; or
- (d) **Termination of the plan.** The termination of this Plan, subject to the provisions of Section 10.2.

## 2.5 CHANGE OF EMPLOYMENT STATUS

If a Participant ceases to be eligible to participate because of a change in employment status or classification (other than through termination of employment), the Participant shall become a limited Participant in this Plan for the remainder of the Plan Year in which such change of employment status occurs. As a limited Participant, no further Salary Redirection may be made on behalf of the Participant, and, except as otherwise provided herein, all further Benefit elections shall cease, subject to the limited Participant's right to continue coverage under any Insurance Contracts. However, any balances in the limited Participant's Dependent Care Flexible Spending Account may be used during such Plan Year to reimburse the limited Participant for any allowable Employment-Related Dependent Care incurred during the Plan Year. Subject to the provisions of Section 2.6, if the limited Participant later becomes an Eligible Employee, then the limited Participant may again become a full Participant in this Plan, provided he otherwise satisfies the participation requirements set forth in this Article II as if he were a new Employee and made an election in accordance with Section 5.1.

## 2.6 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason other than death, his participation in the Benefit Options provided under Section 4.1 shall be governed in accordance with the following:

(a) **Section 4.1 Benefits.** Subject to (b), (c), and (d), below, with regard to Benefits provided under Section 4.1, the Participant's participation in the Plan shall cease effective on the date provided in (and subject to the Participant's right to continue coverage under) any Insurance Contract (including any self-funded benefit) for which premiums have been paid.

(b) **Dependent Care FSA.** With regard to the Dependent Care Flexible Spending Account, the Participant's participation in the Plan shall cease and no further Salary Redirection contributions shall be made effective with the date of employment termination. However, such Participant may submit claims for employment related Dependent Care Expense reimbursements for claims incurred up to the date of termination and submitted within 90 days after termination, based on the level of the Participant's Dependent Care Flexible Spending Account as of the date of termination.

(c) **COBRA applicability.** With regard to the Health Flexible Spending Account, the Participant's contributions shall cease and no further Salary Redirection contributions shall be made effective with the date of employment termination, except that the Participant may submit claims for expenses that were incurred during the portion of the Plan Year before the end of the period for which payments to the Health Flexible Spending Account have already been made as of the date of employment termination. Thereafter, the health benefits under this Plan including the Health Flexible Spending Account shall be applied and administered consistent with such further rights a Participant and his Spouse and Dependents may be entitled to pursuant to Sections 2201 – 2208 of the Public Health Service Act and Section 11.13 of the Plan.

(d) **Health Flexible Spending Account Advance Premiums.** In the event a Participant terminates his participation in the Health Flexible Spending Account during the Plan Year, if Salary Redirections are made other than on a pro rata basis (or otherwise in advance of the period of coverage), upon termination, the Participant shall be entitled to a reimbursement for any Salary Redirection previously paid for coverage or benefits relating to the period of coverage after the date of the Participant's effective date of employment termination regardless of the Participant's claims or reimbursements as of such date. Alternatively, if allowed by the Administrator, an amount that would otherwise be reimbursed may be applied at the request of the Participant toward any premium for permitted continuation coverage under the Health Flexible Spending Account, as applicable.

## 2.7 DEATH

If a Participant dies, his participation in the Plan shall cease in the manner provided for a termination of employment in Section 2.6 except as follows:

(a) The period of coverage for under the Health Flexible Spending Account and Dependent Care Flexible Spending Account for the such Participant's covered Spouse or Dependents shall continue to the end of the Plan