

## **SECTION 129 DISCRIMINATION TEST**

### **TEST 1 – ELIGIBILITY**

The Dependent Daycare Assistance Program shall benefit all employees as classified by the employer and shall not be discriminatory in favor of highly compensated employees (HCEs) (see definition below)

### **TEST 2 – OWNER’S CONCENTRATION TEST**

5% of more principal shareholders and owners (and their spouses or dependents who are employees of the employer) may not exceed 25% of the amounts paid or incurred for dependent daycare assistance during a plan year.

### **TEST 3 – CONTRIBUTIONS AND BENEFITS TEST**

This test ensures the HCEs aren’t eligible to get better benefits and aren’t authorized to make lower contributions for equal benefits.

The average benefits for dependent daycare assistance provided to employees who are not highly compensated must be at least 55% of the average benefits for dependent daycare assistance provided to highly compensated employees (see definition below)

## **DEFINITION**

### **Highly Compensated Employees:**

- The employee was a 5% owner of the employer at any time during the current or preceding plan year (include ownership of the employee’s spouse, parents, children and grandchildren); or
- For the preceding year, the employee had compensation in excess of \$110,000 AND, if the employer elects this application of this clause for such preceding year, the employee was also in the “top-paid group” (the top 20% of employees). An employee is in the top-paid group of employees for any year if such employee is in the group consisting of the top 20 percent of the employees when ranked on the basis of compensation paid during such year.

**INSTRUCTIONS:** Place the Shareholders, Owners, and Highly Compensated Employee's names in the name column. List the number of eligible employees below. Sign and date the form and return it as soon as possible. Be sure to include the applicable Plan Year for the information you are submitting.

\_\_\_\_\_ **NUMBER OF ELIGIBLE EMPLOYEES** *(Include all employees eligible to participate in the Dependent Daycare Assistance Program whether they participate or not)*

**SHAREHOLDERS OR OWNERS** *(include 5% or more Shareholders and owners and spouse's and dependents of Shareholders and Owners)*

Name

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**HIGHLY COMPENSATED EMPLOYEES** *(see definition)*

Name

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**EMPLOYER**

\_\_\_\_\_  
**AUTHORIZED SIGNATURE**

**2011 Plan Year**

\_\_\_\_\_  
**DATE**

***If all three discrimination tests pass, you will not need to complete the information requested on this page. You may complete it now and send it to us with the other pages of information or, if you prefer, we will contact you for this information ONLY if one or more of the test fails.***

Include the names of any excluded employees who participate in the Dependent Care Assistance Program. If there are excluded employees who do not participate in Dependent Care Assistance, just give the total number (do not include their names).

***You may exclude the following employees (count each employee only once):***

- 1. employees who have not completed six months of service***
- 2. employees who normally work less than 17 ½ hours per week***
- 3. employees who have not attained age 21***
- 4. union employees who are covered by a collective bargaining agreement (only if at least 90% of all employees are union employees covered by a collective bargaining agreement, and if the plan being tested includes only non-union employees)***
- 5. employees earning less than \$25K annually***

Excluded employees who participate in the Dependent Care Assistance Program:

Name

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Total number of excluded employees who DO NOT participate in the Dependent Care Assistance Program: \_\_\_\_\_