



Non-Discrimination Testing (NDT)

Who Needs It, Why It Matters, and How to Avoid Penalties—We're Here to Help!

WHAT IS NDT?

NDT is a series of tests required by the IRS to ensure that benefits offered through certain employee plans, like retirement or cafeteria plans, are fair and do not favor highly paid or key employees over regular staff.

WHO NEEDS TO COMPLY?

The IRS requires all employers, regardless of size, to conduct testing for applicable benefit plans (outlined on the next page). However, smaller groups may encounter unique challenges due to their limited employee diversity.

WHEN SHOULD TESTING BE DONE?

Testing is typically conducted annually after the plan year concludes to account for all contributions and benefits. However, a proactive approach involves performing tests within the first 30 days of the plan year to identify and address potential issues early.

WHAT INFORMATION IS NEEDED FOR TESTING?

To run NDT, you'll typically need to provide:

- **Employee Census Data:** Names, compensation, job titles, and employment status (full-time/part-time).
- **Plan Design Details:** Information about the benefits offered and how they are structured.
- **Employee Contribution Data:** Participation levels, contributions, or deferral amounts for the plan.

Our testing process evaluates this data to confirm the plan meets fairness and compliance standards.

HOW MANY NDT TESTS ARE REQUIRED?

The number of tests required for cafeteria plans can range from 2 to 9, depending on the type of plan offered. We'll explore each test in detail throughout this guide.



BENEFITS THAT REQUIRE ANNUAL TESTING



Cafeteria Plans (Section 125 Plans)

These plans allow employees to pay for benefits with pre-tax dollars, examples include:

- Medical Plans
- Medical Flexible Spending Accounts (FSA)
- Dependent Care FSA
- Commuter Accounts - Parking & Transit
- Health Savings Accounts (HSA)*



Self-Funded Plans 105h

Employers offering self-funded health plans must test to ensure the plan does not favor Highly Compensated employees.

Examples include:

- Health Reimbursement Accounts (HRA)
- Self-Funded Medical
- Self-Funded Dental and/or Vision
- Medical Expense Reimbursement Plans (MERPS)



Ancillary Products

Group Term Life Insurance

Employer provided life insurance over \$50,000.

Accident Insurance

Including accident-only coverage and accidental death and dismemberment (AD&D) insurance.

Disability Insurance

Premiums for short-term or long-term disability coverage may be offered on a pre-tax basis.



Other

Educational Assistance Programs (Section 127)

Employer funded programs that provide education benefits i.e. tuition reimbursement.

Adoption Assistance Programs

Pre-tax assistance for adoption related expenses.

401(k), 403(b), 457(b)

*HSA plans are subject to NDT only if the employer offers an HDHP and allows pre-tax employee contributions to the HSA, with optional employer contributions.

MONEYWISE TESTING TIMELINE

Intake



Client Completes
Intake Paperwork
Online.

3-5 Business Days

Testing



MoneyWise performs
all necessary tests.

Immediate

Results



Results are sent
electronically
immediately upon
test completion.

If a test failure occurs, Moneywise will provide recommendations and conduct a retest after corrections are made.

The examples listed above are not exhaustive and are provided for informational purposes only. To ensure compliance with applicable regulations and to address the unique circumstances of your plan, always consult with a qualified benefits professional or legal advisor.

CONTACT US FOR MORE INFO

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MoneyWise Solutions

The Risks of Non-Compliance

The IRS does not require businesses to submit Non-Discrimination Test results, but regular testing and proper documentation are essential to avoid costly penalties. Failure to pass may result in taxes on benefits, excise taxes, or other penalties if not corrected. A few examples are outlined below.

Taxation of Benefits for Highly Compensated Individuals (HCIs)

Benefits provided to HCIs may become fully taxable.

For example, if a self-funded health plan fails 105(h) testing, HCIs could be taxed on the excess value of benefits they received

Loss of Tax-Favored Status for Certain Plan Benefits

If a cafeteria plan (Section 125) fails testing, pre-tax contributions (e.g., FSAs, health insurance premiums) made by HCIs or key employees may be treated as taxable income.

Additional Payroll Tax Liabilities

Employers may owe payroll taxes on newly taxable benefits if testing failure results in employee income adjustments.

Penalties for ERISA or ACA Violations

Plans that fail testing may be non-compliant with other regulations like ERISA or ACA, leading to additional penalties or fines.

Increased Administrative Costs

Corrective actions, including retesting or redesigning the plan, may result in added costs for the employer.

Legal and Reputational Risks

Employees may file claims if they perceive unfair treatment, and public knowledge of non-compliance could harm the company's reputation.

HOW THE IRS IDENTIFIES NON-DISCRIMINATION TESTING FAILURES

- Employer Reporting: Forms like 5500, W-2, or 8928.
- IRS Audits: Routine or targeted plan reviews.
- Employee Complaints: Reports of unfair treatment.
- ACA Compliance Reviews: Checks for ACA-related violations.
- Voluntary Disclosure: Employer-initiated reporting of failures.

Proper documentation and regular testing can help avoid these triggers.



REQUIRED NON-DISCRIMINATION TESTS BY BENEFIT

The table below provides a sample list of tests by benefit type. Note that additional sub-tests may apply depending on the specific benefit. Furthermore, some benefits may have additional stipulations if they are also classified under Section 125 Cafeteria Plans.

	Eligibility Test	Benefit Test	Key Employee Concentration Test	5% Owner Contribution Test	55% Average Benefits Test
Section 125 Cafeteria Plans	✓	✓	✓	✓	
Self-Funded 105H Plans	✓	✓		✓	
HSA	✓	✓	✓	✓	
Dependent Care FSA	✓	✓	✓	✓	✓
Health FSA	✓	✓	✓	✓	
Commuter Spending Accounts	✓	✓	✓	✓	
Ancillary Products	✓	✓		✓	✓

MONEYWISE SOLUTIONS NDT PACKAGES

MoneyWise organizes Non-Discrimination Tests into packages tailored to common benefits, making pricing more straightforward.

Three Non-Discrimination Testing Packages

1. Section 125 Cafeteria Plans
2. Section 105h Self-Funded Plans
3. Flexible Spending Accounts

\$300

Per Package

Maximum Charge - Two Packages