

## Glossary – U

**Unfair Competition** – Unfair competition is an act among persons, corporations, or partnerships which involves interstate commerce, as determined by the FTC, the courts, and common sense to be such. Unfair method of competition includes any acts which are either unfair or deceptive.

**Utilization** – This word refers to the extent to which an eligible person claims such person's right to plan benefits.

**Utilization Test** – Utilization test (sometimes called concentration and benefits test) shows that comparable benefits are utilized by a fair number of employees at all compensation levels and in all positions. There are three such tests: (a) the Key Employee Concentration Test, (b) the Dependent Care Test, and (c) the Owner's Test for cafeteria plans with flexible spending account options.

1. **Key Employee Concentration Test:** This test demonstrates that no more than 25% of non-taxable benefits are provided to key employees. Key employees are defined as (a) an owner of at least 5% of the company, (b) an owner of at least 1% of the company with gross annual compensation over \$150,000, or (c) an officer with gross annual compensation over \$130,000
2. **Dependent Care Test:** This test demonstrates that the average benefits received by non-highly compensated employees are at least 55% of the average benefits received by highly compensated employees. A highly compensated employee is defined as: (a) an owner of at least 5% of the company in the plan year being tested, or in the 12 months prior to the plan year being tested, or (b) an employee with gross annual compensation (before deductions) over \$90,000 in the 12 months prior to the year being tested; if the employee is hired in the current year and earns over \$90k in the current year (s)he is not considered highly compensated unless (s)he is an owner.
3. **Owner's Test:** This test demonstrates that no more than 25% of the non-taxable dependent care flexible spending account benefits are provided to owners of at least 5% of the Employer.