

Employee Benefits Plan Status Changes Related To COVID-19

April 6, 2020

Options for Benefits Changes due to COVID-19 Related Circumstances

Event	Group Health Plan	Health FSA	Dependent Care FSA	Short Term Disability	Comments
Mid-year cost increase to employee	When there's a "significant cost change" (in this case, an increase in cost to employees), employees will generally have the option to switch to a cheaper medical plan offered by the employer, or if there isn't a cheaper option, to drop coverage.	No change permitted.	Any time there is a change to the cost of care or care needed employees can make an election change.	Not applicable.	<p>There is no specific guidance on when a cost change is considered "significant."</p> <p>Employers with fully-insured plans should communicate with insurance carriers about anticipated changes in cost-sharing.</p> <p>Employees should be given advanced notice of any significant cost change. A Summary of Material Modifications (SMM) is generally be the best vehicle to communicate this type of change.</p> <p>Employers should consider the impact of the change on whether at least one minimum value medical plan (60% AV) is affordable under</p>

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					the Affordable Care Act (ACA) Pay or Play rules.
Mid-year increase to medical plan deductibles, co-pays, or out-of-pocket limits	Any meaningful increase to deductibles, co-pays, or out-of-pocket limits would be a “significant coverage curtailment” and employees will generally have the option to switch to a different medical plan (in this case a richer plan) offered by the employer or drop coverage.	No change permitted.	Not applicable.	Not applicable.	<p>Deductible, co-pays, and out-of-pocket amounts are disclosed in SBCs, which means a new SBC must be provided 60 days in advance of a mid-year change.</p> <p>This would require an SMM under ERISA.</p> <p>Employers should consider the impact to the actuarial value of plans, employers should confirm that they still offer at least one minimum value medical plan (60% AV) under ACA Pay or Play rules.</p>
Mid-year carrier “special” enrollment opportunity	<p>Adding COVID-19 testing and any office or other visit that results in COVID-19 testing without cost sharing likely rises to the level of a “significant improvement of a benefit package option.” Eligible employees who had declined coverage could now enroll.</p> <p>Because all benefit options are now required to cover COVID-19 testing and the related visit this would not be an opportunity for employees who had already elected coverage to change benefit options.</p>	No change permitted.	Not applicable.	Not applicable.	<p>Employers who want to accommodate this carrier offer should communicate this opportunity to eligible employees who had previously declined coverage and provide a reasonable opportunity or time period to enroll.</p> <p>This would require an SMM under ERISA.</p> <p>Self-funded plans should consult with their stop-loss carriers before extending a similar opportunity.</p>

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<p>Furlough (generally, a suspension of all work for a shorter period without termination of employment)</p>	<p>Depending on underlying documents, contracts, and policies, employees may or may not lose benefits eligibility. Employers should follow existing approved benefits continuation policies to determine if eligibility is lost.</p> <p>If eligibility is lost due to a reduction in hours employers should offer COBRA. Carriers or stop-loss partners may be willing to extend emergency eligibility.</p> <p>Employees can also drop coverage following a reduction in hours to below 30 hours per week – even if eligibility isn’t affected – if the employee intends to enroll in other minimum essential coverage (the employer’s offer of coverage will still count for pay or play purposes if employees retain ACA FT status).</p>	<p>No change is permitted unless eligibility is lost.</p> <p>If eligibility is lost due to a reduction in hours employers should offer COBRA only to underspent accounts. Section 125 administrator will make that determination.</p> <p>If eligibility is not lost employees cannot drop H-FSA coverage. Employees could continue to make post tax contributions. However, employee will likely stop making contributions and will not be eligible to reimburse expenses during that time. When a furloughed employee returns to work, the employer can allow the employee to make catch up contributions to reach their original annual election amount or continue to make their standard monthly salary reduction.</p>	<p>Any time there is a change to the cost of care or care needed (here if an employee is home more) employees can make an election change.</p>	<p>Generally, eligible employees have to be actively at work immediately prior to eligibility.</p> <p>Due to COVID-19, certain carriers are modifying those standard provisions to allow individuals to remain otherwise eligible for a certain period of time as long as premiums are paid during that time.</p> <p>This is an insurance carrier based decision, so it is important to confirm with carriers.</p>	<p>A furlough is a temporary, leave of absence that continues employment but reduces scheduled hours or requires a period of unpaid leave. An employer may require all employees to go on furlough, or it may exclude some employees who provide essential services.</p>
<p>Layoff (a termination of employment even if intended to be temporary)</p>	<p>Benefits terminate and employers should offer COBRA.</p>	<p>Offer COBRA only to underspent accounts. Section 125 administrator will make that determination.</p>	<p>Many DCAPs are designed to permit employees who have ceased participation (e.g., due to termination of employment) to be reimbursed from their</p>	<p>Not applicable.</p>	<p>A layoff is a termination of employment and a separation from payroll. Layoffs can be temporary or permanent.</p>

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			<p>remaining DCAP account balances for <i>eligible expenses</i> (e.g., to allow an employee to work or look for work) incurred during the remainder of the plan year.</p> <p>COBRA does not apply.</p>		
<p>Reduction in hours</p>	<p>If eligibility is lost due to a reduction in hours employers should offer COBRA. Carriers or stop-loss partners may be willing to extend emergency eligibility.</p> <p>Employees can also drop coverage following a reduction in hours to below 30 hours per week – even if eligibility isn’t affected – if the employee intends to enroll in other minimum essential coverage (the employer’s offer of coverage will still count for pay or play purposes if employees retain ACA FT status).</p>	<p>No change is permitted unless eligibility is lost.</p> <p>If eligibility is lost due to a reduction in hours employers should offer COBRA only to underspent accounts. Section 125 administrator will make that determination.</p> <p>If eligibility is not lost employees cannot drop H-FSA coverage. Employees could continue to make post tax contributions. However, employee will likely stop making contributions and will not be eligible to reimburse expenses during that time. When an employee returns to a normal work schedule, the employer can allow the employee to make catch up contributions to reach their original annual election</p>	<p>Any time there is a change to the cost of care or care needed (here if an employee is home more) employees can make an election change.</p>	<p>Not applicable.</p>	<p>Section 125 administrators should continue to apply longstanding rules (notably, H-FSAs).</p>

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		amount or continue to make their standard monthly salary reduction.			
Reduction in compensation	<p>A change in financial circumstance, like a reduction in compensation, is not an election change event.</p> <p>Employees cannot drop coverage unless they lose eligibility or their hours are reduced below 30 per week. Employees can drop coverage following a reduction in hours to below 30 hours per week – even if eligibility isn’t affected – if the employee intends to enroll in other minimum essential coverage (the employer’s offer of coverage will still count for pay or play purposes if employees retain ACA FT status).</p>	<p>No change is permitted unless eligibility is lost.</p> <p>If eligibility is lost due to a reduction in hours employers should offer COBRA only to underspent accounts. Section 125 administrator will make that determination.</p> <p>If eligibility is not lost employees cannot drop H-FSA coverage. Employees could continue to make post tax contributions. However, employee will likely stop making contributions and will not be eligible to reimburse expenses during that time.</p>	Not applicable.	Not applicable.	Section 125 administrators should continue to apply longstanding rules.
Unpaid FMLA leave	<p>Employees may elect to drop coverage but employers are required to continue group health plan coverage on the same terms as active employees.</p> <p>The employee’s share of premiums must be paid by the method normally used during any paid leave, which will generally be through payroll deductions. For unpaid leave, or where the pay provided is insufficient to cover the employee’s premiums, the rule on</p>	<p>Employees are entitled to continue coverage if they pay premiums (pay in advance on agreement, pay post tax as you go, or pay on return by agreement).</p> <p>Employees can stop making contributions and will not be eligible to reimburse expenses during that time.</p>	<p>Any time there is a change to the cost of care or care needed (here if an employee is home more) employees can make an election change.</p> <p>For expenses to be covered the employee must continue to make payments and any expenses must be</p>	STD may apply where an absence is related to an employee’s own serious health condition.	Section 125 administrators, as well as disability carriers, should continue to apply longstanding rules.

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	<p>payment of premiums is: (1) pay in advance on agreement, (2) pay post tax as you go, or (3) pay on return by agreement). Paying post tax as you go is a strong recommendation.</p> <p>If an employee chooses not to retain coverage, the employee is entitled upon returning from leave to have benefits reinstated on the same terms as prior to taking the leave.</p>	<p>When an employee returns to work, the employer can allow the employee to make catch up contributions to reach their original annual election amount or continue to make their standard monthly salary reduction.</p>	<p>adjudicated as <i>eligible</i> for reimbursement (e.g., to allow an employee to work or look for work).</p>		
<p>FFCRA emergency paid sick leave or expanded FMLA leave</p>	<p>Employees may elect to drop coverage but employers are required to continue group health plan coverage on the same terms as active employees.</p> <p>Under both EPSL and EFMLA leaves, the employee's share of premiums must be paid by the method normally used during any paid leave, which will generally be through payroll deductions. For unpaid leave, or where the pay provided by EFMLA or EPSL is insufficient to cover the employee's premiums, the rule on payment of premiums refers back to existing FMLA practices (pay in advance on agreement, pay post tax as you go, or pay on return by agreement). Paying post tax as you go is a strong recommendation.</p> <p>If an employee chooses not to retain coverage, the employee is entitled upon returning from leave to have benefits</p>	<p>Employees are entitled to continue coverage if they pay premiums (pay in advance on agreement, pay post tax as you go, or pay on return by agreement).</p> <p>Employees can stop making contributions and will not be eligible to reimburse expenses during that time.</p> <p>When an employee returns to work, the employer can allow the employee to make catch up contributions to reach their original annual election amount or continue to make their standard monthly salary reduction.</p>	<p>Any time there is a change to the cost of care or care needed (here if an employee is home more) employees can make an election change.</p>	<p>STD will not cover an absence related to a school closure or where a child's caregiver is unavailable. Similarly, STD will not generally pay during a quarantine period unless and until an individual displays symptoms rising to the level of a covered disability.</p>	<p>FFCRA leaves generally follow FMLA rules.</p>

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	reinstated on the same terms as prior to taking the leave.				

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