



## What all employers are asking about health and retirement benefits during COVID-19

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Employers are trying to be as generous as possible during the interruption to normal operations caused by COVID-19, including by keeping benefits in place even when salaries are out of the question. Every penny and decision may feel like a complicated balancing act, but many employers are in the same boat. Some of these common topics and questions may help employers brainstorm and problem-solve during these uncertain times.

Can we keep employees on health care coverage during periods of layoff or furlough?

- Probably, but do not make this decision in a vacuum. Insurers are actively working with plan sponsors to expand coverage eligibility, at least for a period. Get it in writing.
- What do your plan and unpaid leave policy say about health care eligibility? Some employers routinely offer six weeks or more of coverage during periods of unpaid leave. Make sure your insurer or stop-loss insurer is aware of and consent to this eligibility. Providing more generous coverage than your plan and insurer contemplate could leave the employer paying for claims in the end. If your plan is not already this generous, consider how you can

amend it to be consistent with your short- or long-term goals.

- Does this extended period of eligibility run concurrently with, or in addition to, COBRA? When is the COBRA qualifying event that triggers formal notice – layoff or loss of coverage?
- Does the ACA affect eligibility? If employees are eligible for coverage during a stability period, they maintain coverage through the end of the stability period regardless of hours worked.

Can we help pay employees' shares of premiums or COBRA while they are laid off?

- Probably, if you can treat everyone in the plan the same. Communicate payment expectations and opportunities when layoff or furlough begins. Most employers collect premiums on regular bi-weekly schedules or catch up when the employee returns to paid work.
- Special rules apply to FMLA and USERRA periods that overlap coverage during unpaid leave.
- Cash payments to employees are taxable.

Are the health benefits any different during this pandemic?

- Yes, both the FFCRA and CARES Act expanded benefits related to COVID-19 testing and treatment. HSAs, FSAs and HRAs are eligible to reimburse over-the-counter medications and menstrual products.
- Mid-year election changes to cafeteria plans may be allowed or even required under HIPAA special election rights. For example, employees who do not owe daycare expenses may want to discontinue dependent care FSA deferrals.

Can we suspend the employer match to the retirement plan?

- Maybe. What kind of match does the plan document describe? Safe harbor plans have more obligations before changing matching amounts. Discretionary matching contributions are more flexible and may be interrupted very quickly. Consider who has the authority to approve this action for your plan and how to communicate it to plan administrators and employees.
- Can an employer's retirement plan do more to help employees access their retirement savings? Yes! Employers can permit penalty-free COVID-related distributions up to \$100,000 that the employee can repay over three years. Required minimum distributions may be suspended for 2020. Plan loans can also be larger or repayments suspended during the remainder of 2020.

Odds and ends

- Employers are permitted to issue "qualified disaster relief payments" that are tax-free to the employee and deductible to the employer as a business expense.
- Employers can pay up to \$5,250 of its employees' student loan payments

during 2020.

- Life and disability insurance may be able to accommodate employees not actively at work.
- A reduction in force of 20 percent of retirement plan participation could cause a plan termination.
- The DOL and PBGC are issuing FAQs and delayed due dates for plans in 2020.

Emergency paid sick leave, tax credits and EFMLA

- In addition to payroll tax credits for sick and family leave under the FFCRA, tax credits are also available for “qualified health plan expenses” related to the leave. This may include both employer and employee portions of health care premiums from April 1, 2020, through December 31, 2020. The IRS has issued guidance on how to calculate this credit.

Most of these COVID-related benefits require plan amendments and coordination with insurers, employees and counsel. Getting employees the benefits they need is complicated, but know that you are not alone.