

COVID-19: Continuing healthcare coverage for furloughed or laid-off employees



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As the coronavirus and its economic impact continue spreading across the nation, employers are dealing with a variety of unprecedented issues in regards to their business operations, including employee benefits plans. Many employers are concerned about continuing healthcare coverage for employees who are furloughed or laid off during this time.

The terms of the group health plan will determine if benefits continue for employees on furlough or lay-off. If there is no group health plan document, the terms of the group insurance contract or the third-party administrator (TPA) service agreement will control. Note that group health plan documents and group insurance contracts generally limit eligibility to employees who are actively at work and regularly scheduled to work a minimum number of hours per week. In many cases, the plan document or insurance contract extends eligibility for an employee on a paid furlough or lay-off. However, if the employee is on an unpaid furlough or leave or is on lay-off, eligibility for coverage usually ends.

If an employee loses eligibility for the group health plan because of a reduction in hours from a furlough or layoff (whether as of the day the furlough or layoff begins, or as of some later date such as the first day of the next month), the employee has a qualifying event under the Consolidated Omnibus Budget Reconciliation Act (COBRA). The employee will be eligible to elect to continue coverage under COBRA if the employer is subject to COBRA (i.e., the employer had at least 20 employees on average in 2019). If the

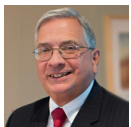
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employer is not subject to federal COBRA, many states have “mini-COBRA” insurance laws that provide the opportunity to continue coverage to those employees.

If an employer wants to continue to provide coverage for employees on furlough or lay-off with the same employee contribution required for active employees, the employer has two options:

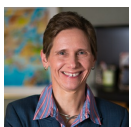
1. For any employee who elects COBRA, reduce or subsidize the required COBRA contribution to the active employee contribution. It is permissible to reduce the COBRA premiums, even under a self-insured plan, as long as this policy is communicated and applied to all employees on a nondiscriminatory basis. Reducing the COBRA premium provides the benefit to the employee on a pre-tax basis. Alternatively, the employer can pay a portion of the COBRA premium and treat that subsidy as taxable compensation to the employee; this approach enables the employer to provide the subsidy in a less uniform manner. Reducing the COBRA premium on a pre-tax basis or subsidizing the COBRA premium on a taxable basis does not require a plan amendment or any revisions to group health insurance contracts, TPA agreements, or stop-loss insurance contracts.
2. Amend the plan to continue active employee coverage for employees on unpaid furlough or lay-off. The required actions differ based on whether the plan is self-insured or fully insured:
 - If the plan is self-insured, the employer needs to verify that the plan’s third-party administrator can administer the coverage in this way. If the employer has stop-loss insurance, the stop-loss carrier must also agree to the change; if the stop-loss carrier does not agree to the change, the employer may not have stop-loss coverage for any catastrophic claims paid for a furloughed/laid-off employee or dependent. The plan document needs to be amended, but that amendment can be adopted after this change is implemented as long as the amendment is adopted before the end of the year.
 - If the plan is fully-insured, the insurance carrier must agree to the change before it can be implemented. The insurance contract will need to be amended, but the insurer may allow the change to be implemented before the contract amendment is actually executed.

The Employee Benefits attorneys at McDonald Hopkins are available to assist you in reviewing the options for your business and developing the approach that best addresses your objectives.



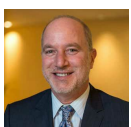
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