



COVID-19 Furloughs, Workforce Reductions, Leaves & Layoffs: How Each Affects Group Health Plan Coverage

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Agenda

1. Understand the types of workforce reductions
 - Work Slowdown: reducing employee hours
 - Furloughs/Leaves of Absence
 - Lay-offs`
2. Discuss the differing effects of each type of work slowdown/shutdown on employee participation in the health plan
3. **Note:** Generally dental and vision follow health plan rules

Work Slowdown

- Employees working/teleworking but hours are reduced
- Can employees continue to participate in employer's group health plan if 30 hour a week requirement is not being met?
- Generally answer is yes, but may need to amend plan to waive 30 hours per week requirement
 - Get insurance or stop loss carrier consent

Work Slowdown – ACA Impact

- **ACA requirements:** lookback measurement method (LBMM)
 - Under LBMM, employee status for the current **stability** period is fixed based on hours worked in **past measurement** period
 - Example: **lookback** period of 10/31/19-11/1/18; **stability** period of 1/1/20-12/31/20
 - Employee who earned FT status for 2020 stability period considered FT even if employee works reduced hours
 - 2020 benefit status is not impacted by work slowdown

Work Slowdown – ACA Impact *(continued)*

- Work slowdown in 2020 (current measurement period) may affect benefit eligibility for 2021 stability period
- Employer may consider a one-time plan amendment that waives hour shortfall for 2021 that was due to work reductions caused by COVID-19
- Again, get carrier approval

Work Slowdown – ACA Impact *(continued)*

- **Monthly measurement method:** employee's FT/PT status depends on hours worked each month
- Work slowdown does impact FT/PT status, and if hours dip below 30 per week, health plan coverage can be terminated
- Employer may consider policy/plan amendment that waives **hourly eligibility requirement** where reduced hours due to COVID-19 condition
- Check with insurance or stop loss carrier – many working with employers on this issue

Work Slowdown – Cafeteria Plan Issues

- Employees with reduced hours may want to drop current coverage
- If employees pay for health plan on a pre-tax basis, coverage election is **irrevocable** for plan year unless “**qualifying event**” occurs
- Reduced hours are only a qualifying event if reduction affects benefit eligibility

Work Slowdown – Cafeteria Plan Issues *(continued)*

- **Reduction in Hours** qualifying event may apply and allow employee to drop:
 - Employee was in employment status in which expected to average 30 hours per week;
 - Change in status such that employee has less than 30 hours;
 - Employee intends to enroll in a different group plan or plan through the Exchange

Work Slowdown – Cafeteria Plan Issues *(continued)*

- **DCAP Issues:** Employee may not be using as much (or any) child care due to reduced hours or teleworking
- Change event for DCAP generally includes:
 - Change in the cost of childcare due to variation in amount needed or increased / decreased cost
 - **BUT** cost change by a relative is not a qualifying event

Workforce Furlough

- **Furlough** generally means an **employer initiated** temporary unpaid leave of absence
 - Employee remains “employed” but hours reduced to zero and usually not being paid
 - Employer may furlough entire workforce (i.e., hair salons, exercise studios etc. must shut down entirely due to governmental stay at home order)
 - Partial workforce furlough: business open in part but doesn’t need as many employees (i.e., restaurant providing only to go business; construction business where work has slowed down but not stopped altogether)

Workforce Furlough *(continued)*

- Furlough does not include situation where employees are able to work from home
- Employees may be at home but are tele-working and being paid

Workforce Furlough - Options

- Employer furloughing employees has 2 options:
 - Keep employees on group health plan during furlough period
 - Terminate employee from health plan as would occur if employee terminated
 - Employee must be offered COBRA
 - COBRA can be subsidized or not
 - In making decision, consider plan document provisions, ACA issues and COBRA

Workforce Furlough - Plan Document Impact

- **Actively at Work Provisions**

- In plan document, health plan eligibility often conditioned on employee being actively at work
- Plan document often provides that employee on approved leave of absence of up to X months (generally 3) is considered actively at work
 - Small employer may only be 2 months
- LOA language generally would cover furlough
- If no LOA absence language, employer could amend plan to include needed language
 - Get consent from insurance or stop loss carrier

Workforce Furlough – ACA Impact

- Employers using **LBMM** must consider ACA requirements
- Furloughed employees in stability period retain “**full-time**” status under ACA
 - Employee is still “employed”
- Employer that terminates benefits while on furlough and offers unsubsidized COBRA may be in violation of “affordability” requirements and subject to ACA penalty if one or more employees obtains an exchange subsidy

Workforce Furlough – ACA Impact *(continued)*

- Employer that does not use LBMM, subject to plan document terms, could terminate coverage for furloughed months:
 - Employer uses **monthly measurement method** or assumes FT status
 - **Small employer** not subject to ACA
- *BUT*, terminating then reinstating creates disruption
- Employer may choose to keep furloughed employees on plan at least short term (i.e., up to 2-3 months) subject to plan document language
 - Check for LOA language
- Get insurance or stop loss carrier consent

Workforce Furlough – COBRA

- If health plan coverage is terminated for employees on furlough, COBRA must be offered
- Where ACA affordability is an issue, employer can solve ACA risk by offering subsidized COBRA for the health plan
 - Coverage is maintained under COBRA, but employer pays the same share of premium as with active coverage
 - Under ACA, COBRA offer is deemed “offer of coverage” and employer subsidy keeps coverage affordable
 - May be more disruptive than maintaining active coverage

Workforce Furlough – Collecting Premium

- Use FMLA methods
 - **Prepay:** Withhold premium (pre-tax) for furlough period from last check
 - **Catch-Up:** Wait and collect (pre-tax) upon employee return
 - **Pay as You Go:** Have employee mail in check
 - Have a strategy for collection
 - Notice required before coverage terminated

Workforce Furlough – FSA Issues

- If employees furloughed and health coverage continued, does **FSA coverage** continue
 - Same analysis as health plan
 - If coverage under FSA terminated, COBRA may need to be offered
- If coverage continued, decide how employees pay premium for FSA
 - Same three methods discussed above

Workforce Furlough – Cafeteria Plan Issues

- As with a work shutdown, furlough may trigger “Reduction of Hours” cafeteria plan change event
 - Allows employee whose hours drop below expected of 30 plus to drop employer plan if intends to enroll in another plan
- If coverage was terminated, upon return to work, do employees get to make new elections?
 - Look to terms of cafeteria plan
 - In general, if employee gone for at least 30 days, plan can allow new elections
- DCAP Issues: See earlier slide re: work reduction

Leave of Absence

- Leave of Absence can be employer initiated or employee initiated
- Principles articulated for furloughs generally apply to a LOA
- However, many employers already have plan document provisions allowing for continued health plan coverage while employee on approved leave of absence of up to 2-3 months (follows FMLA requirements)
- Generally employer pays its share of premium; employee share collected through methods outlined earlier

Layoffs

- A layoff is an employer initiated termination
- Employment formally ends, even if employer hopes/expects to re-hire employees in the future
- Benefits end per the terms of employer handbook/plan document; usually end last day of the month in which termination occurs

Layoffs - COBRA

- Employees are offered COBRA just like any terminating employee
 - Employer can subsidize COBRA for a period of time and subject to any conditions employer establishes
 - May be a good option if employer hoping to be up and running in the future
 - Remember FSA limited COBRA requirement

Layoffs - Rehire Considerations

- If employer rehires former employees when business back up and running, ACA's "break in service" rule may apply
 - Under ACA, as a general rule, unless break in service exceeds 13 weeks, employer cannot impose new waiting period and employees may retain previously earned FT status under LBMM
- Regardless of ACA, employer may consider amending plan document to waive waiting period for returning employees that were laid off as a result of COVID-19
 - Get insurance or stop loss carrier consent

Insurance Carriers – Market Considerations

- Most carriers are allowing a one-time contract amendment under which employer can keep furloughed employees on group health plan during furlough
 - May be time limitation
- Groups can work with producer / account manager to secure carrier approval

Insurance Carriers – Market Considerations *(continued)*

- **Special Enrollment Period:** Some insurance carriers are offering a special enrollment period to allow employees who previously waived coverage to elect coverage
 - Be aware this currently does not comply with cafeteria plan rules (possible cafeteria plan rules will be amended for COVID-19)
- **Life and Disability Coverage:** principles discussed above apply primarily to health plans; check life and disability policies/contracts for furlough/leave of absence provisions
 - Some carriers allowing continued coverage during furlough but others are not

Unemployment Compensation

Employees whose hours are reduced or who are furloughed or laid off may be entitled to unemployment compensation subject to meeting general requirements

- **Utah unemployment info:**

<https://jobs.utah.gov/covid19/uifaqemployers.pdf>

- **Idaho unemployment info:**

<https://idahoatwork.com/2020/03/18/employer-faqs-about-unemployment-insurance-and-covid-19/>

- **Colorado unemployment info:**

<https://www.colorado.gov/pacific/cdle/information-and-resources-coronavirus>

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Questions?