# Actions & FAQs for employers during the COVID-19 pandemic

the Taben Group
COBRA, Direct Billing & Flex Administration

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benefit solutions

# General guidelines for employees on leave/furlough/change in benefits eligibility status

**My company is doing everything it can to keep our employees on payroll and eligible for benefits during this time. We are reviewing all employment status contingencies at this time, including paid leave under FMLA, reductions in hours and/or rate of pay, short-term unpaid leave, and/or permanent layoffs. How do these situations affect eligibility and continuation of health and FSA benefits?**

See the table below question 8 these questions for a listing of various employment status change events, along with relevant considerations and recommendations related to health plan and FSA coverage.

**For employees on leave under the Family Medical Leave Act (FMLA) provisions, arethere other considerations that I should communicate?**

Employees impacted by COVID-19 themselves, or those who need to be home to take care of an immediate family member may wish to go on a leave of absence (LOA). It is important to discuss the options afforded to your employee through the Family Medical Leave Act (FMLA) before the leave starts, if possible. You will need to determine whether the employee wants to continue coverage during leave. If they choose to continue coverage, expenses incurred during leave are eligible. The IRS regulations provide three options for funding the benefit in the event an employee chooses to continue coverage:

- accelerate contributions out of the last paycheck before leave begins
- pay-as-they-go using after-tax dollars
- catch-up payments upon return

If the employee revokes FSA coverage, expenses incurred during the LOA are not eligible for reimbursement. Upon return from leave, the employee may resume their original per paycheck deduction (thereby decreasing their annual election by the amount of the missed contributions).

**What about employees going on unpaid leave outside of FMLA provisions?**

In general, no election changes can be permitted for an unpaid leave unless the employee who goes on leave loses eligibility for coverage. Employers that would like employees to be able to drop coverage during unpaid leave must amend their documents to state that those going on unpaid leave are not eligible for benefits. Some employers will borrow FMLA rules and apply those to unpaid leave. Employers will need to consult their plan documents or related polices regarding unpaid leave and amend those as they see necessary.

**What about employees who are being furloughed?**

Furlough is generally not a change in status unless the furlough triggers eligibility as stated in your plan document. In many cases, furloughed employees are likely to be eligible for COBRA. If you want to provide free or subsidized coverage to furloughed employees and your plan is fully insured or you have purchased stop-loss insurance, we recommend employers consult with the carrier before amending your plan to provide such coverage.

**What about employees who will be working reduced hours?**

A reduction in hours may allow coverage to be revoked prospectively under group health plans, but not health care FSAs unless a reduction in hours triggers a change in eligibility. Employees working reduced hours can change or stop their health care FSA elections if the reduction results in a change in eligibility as defined in your health plan or flexible benefits plan documents. Employees whose hours of service are reduced below 30 hours per week as a result of a change in employment status can drop employer-sponsored health coverage (even if eligibility for the coverage is not affected) if the participant intends to enroll in another plan offering minimum essential coverage and other specific conditions are met. These rules apply to variable hour employees and is beyond the scope of this FAQ. If employers have variable hour employees they will need to review the rules regarding reduction of hours and permissible changes.

**What about employees who will be working with a reduction in their pay?**

Reduction in pay are typically not considered qualified status change events unless specifically defined in your plan document. If pay reduction causes the employee to become newly eligible for a subsidy under the Affordable Care Act, the employee may be able to enroll for health coverage through an ACA exchange. We are seeing employers weigh the benefits of reducing the cash flow burden on employees who are experiencing hardships against any compliance risks during this time of unprecedented emergency. Employers should consult with their legal counsel and/or employment advisors for guidance in these circumstances.

**Do recent announcements from the federal government during the COVID crisis help employers and employees who are dealing with changes in employment status?**

The U.S. Department of Labor's Wage and Hour Division (WHD) published its first round to provide information to employees and employers about how each will be able to take advantage of the protections and relief offered by the Families First Coronavirus Response Act (FFCRA) when it takes effect on April 1, 2020. FFCRA gives American businesses with fewer than 500 employees funds to provide employees with paid leave, either for the employee's own health needs or to care for family members. Employer will need to determine how they will treat employee on FFCRA. Review your plan documents and if they are silent on these provisions the employer may want to consider creating their own policy consistent with applicable laws.

**Can I take FSA deductions for employees using vacation/sick time while on leave?**

Yes, as most employees using paid vacation and sick time are still fully employed and compensated under your PTO/sick policies and are not triggering a change in eligibility.

| Change in employment status by employee, spouse, or dependent that affects eligibility | Major Medical | Health FSA | Daycare FSA |
|---|---|---|---|
| Commencement of Employment by Employee (new hires) | Provided that eligibility was gained for this coverage, employee may add coverage for employee, spouse, or dependents and coverage option (e.g., HMO to PPO) change may be made. | Same as previous column.. | Same as previous column.. |
| Commencement of Employment by Spouse or dependent | Employee may revoke or decrease election under employee's, spouse's, or dependent's coverage if employee, spouse, or dependent is added to spouse's or dependent's plan; coverage option (e.g., HMO to PPO) change may be made. | Employee may decrease or cease election if gains eligibility for health coverage under spouse's or dependent's plan. | Employee may make or increase election to reflect new eligibility (e.g., if spouse previously did not work) and may revoke election for dependent who is added to spouse's plan. |
| Termination of Employment - Employee | Employee may revoke or decrease election for employee, spouse, or dependent who loses eligibility under the plan. Coverage option change may be made. | Employee may revoke election to reflect loss of eligibility (note that under most health FSAs, employee loses coverage automatically). | Employee may revoke or decrease election to reflect loss of eligibility. |
| Termination of Employment - Spouse or Dependent | Employee may enroll or increase election for employee, spouse, or dependents who lose eligibility under spouse's or dependent's employer's plan. Also, coverage option (e.g., HMO to PPO) change may be made. In addition, other previously eligible dependents may also be enrolled under tag-along rule. | Employee may enroll or increase election to reflect loss of eligibility for health coverage. | Employee may enroll or increase election if spouse or dependent loses eligibility for DCAP. Employee may decrease or cease election to reflect loss of eligibility for coverage (e.g., if spouse stops working). |
| Termination and rehire within 30 days | Prior elections at termination are reinstated unless another event has occurred that allows a change. | Same as previous column.. | Same as previous column.. |
| Termination and rehire after 30 days | The plan, by design, can either allow the employee to make a new election, require reinstatement of the old election, or keep the participant out of the plan for the remainder of the year. | Same as previous column.. | Same as previous column.. |

## Health Care Flexible Spending Accounts

**Our company's FSA claims run-out period for our 2019 FSA plan is ending on 3/31/2020. I would like to extend it to give my employees more time to file claims...can I do this and how?**

Yes, employers may extend their FSA claims run-out period by making a plan document amendment and communicating a change to eligible employees. Please note that extending the run-out period only gives participants additional time to file claims for medical expenses incurred during the 2019 plan year. Extending the run-out period does not allow to incur new medical expenses in 2020 and file claims retroactively against the 2019 plan year. Please reach out to us at employerservices@naviabenefits.com if you need assistance in making plan amendments.

**Our company's FSA grace period just ended on 3/15/2020. Can I extend this so that employees can incur new medical expenses and file under our 2019 plan year?**

No, currently under published IRS guidelines, the FSA grace period is a defined and fixed period of 2 ½ months following the close of the plan year. The IRS has not provided any additional guidance or changes to this policy since the onset of the COVID-19 crisis, but Navia is monitoring all regulatory updates and will provide updates if and as they are made available.

**Can we change our 2020 plan so that employees can carry over more than $500 to the upcoming plan year?**

No, currently under published IRS guidelines, the FSA carryover provision allows a maximum of $500 to be rolled over from the current plan year to the following plan year. The IRS has not provided any additional guidance or changes to this policy since the onset of the COVID-19 crisis, but Navia is monitoring all regulatory updates and will provide updates if and as they are made available.

**We have employees who recently made elections in their FSAs for planned dental or surgical procedures, and the provider facilities where those procedures were to be performed are now closed or have canceled all non-essential care during the crisis. Can these employees change or cancel their election, or can we extend our plan year to accommodate these employees?**

There are no current provisions in the FSA regulations that allow changes/reductions in annual elections due to the lack or unavailability of specific providers. Employers who have not previously adopted either the FSA grace period or carryover provision in their plans may want to consider this as a means of helping employees in these situations. Employees may also want to consider using their funds for other needed medical services during this time.

# Daycare Flexible Spending Accounts

**We have employees whose children will not be attending school for the remainder of the school year and now require day care. Many employees will be asking family members to watch their child while at work. Can they still participate in the DCFSA, and can they use their account to pay their family member?**

Yes, employees in this situation can still participate in your DCFSA plan and pay their family member to provide care for their children. The family member providing care cannot be the employee's spouse and cannot be a dependent under the age of 19.

**Are school and day care facility closures qualifying events that would allow participants to change their Day Care election, and how can I help them do this?**

Yes, a change in day care provider is a qualifying status change event. Employers should make the appropriate deduction changes through their payroll provider and update the election with Navia through their normal data transfer processes (file feed, or the online through the Navia Employer Portal).

**My daycare is closed and now I must enroll my child into a temporary pandemic daycare. Is this daycare center eligible and if so, can I change my dependent care election if need be?**

Yes, daycare facilities established specifically in response to the COVID-19 crisis are eligible providers, and employees can make or change their DCFSA elections to pay for these services as described above.

**My spouse is no longer working but he/she expects to go back to work soon. We don't want to lose our spot at the daycare and are still paying a fee to reserve our spot, can I still participate in the dependent care FSA?**

Indirect childcare expenses (deposits, registration fees, etc.) are eligible for reimbursement under a DCFSA plan as a function of providing actual care to your children. In the context of the question, Navia interprets fees to hold spots in day care facilities where your child attends to be eligible expenses under this definition. Claims for indirect childcare expenses become eligible for reimbursement once the spouse goes back to work and childcare with the provider has resumed.

**My spouse is now working from home and our kids are no longer in daycare. We are contributing an equal amount all year long into our dependent care FSA. We have already incurred $5,000 in dependent care expenses with dates of service incurred before the kids stopped going to daycare. Can I still participate in my employer's dependent care FSA and just send in claims from while they were still going to daycare?**

Yes, you can claim and be reimbursed for eligible daycare expenses that have been incurred earlier in the plan year. You do not need to have children actively receiving childcare in order to submit claims for prior expenses.

**Will an E-mail from a participant requesting a change in their DCFSA election suffice for documentation purposes?**

Yes.

**Will DCFSA participants who change their election be able to reinstate their original election later this year if school and/or day care facilities resume normal services?**

Yes, as long as the reinstatement/change is consistent with their future use of eligible daycare services.

## Health Savings Accounts

**Our company has many employees who have active payroll contributions to their HSAs. Can they change their contributions if they are facing reduced hours or temporary leave?**

Yes, employees can change future payroll contributions to Health Savings Accounts (HSAs) at any time. Note that employees must be eligible and enrolled in qualifying high-deductible health plan (HDHP) in order to contribute to their HSAs.

**Can employees on unpaid leave continue to fund their HSAs through contributions from their own bank account?**

Yes, provided that they remain enrolled in a qualified HDHP. In this circumstance, employees should be made aware that they will not get the pre-tax withholding benefits associated with payroll contributions while they are in a leave status.

**What impact does the recently-announced deferral of the tax filing deadline to July 15th have on HSAs?**

The Treasury Department and the IRS recently announced a deferral of the 2019 tax filing deadline to July 15th. With this announcement, the deadline to make contributions to your 2019 HSA have also been extended to July 15th. This also implies that Form 5498s for the 2019 tax year will not be made available until sometime after the filing deadline, likely in mid- to late August.For a full list of questions and answers related to the IRS filing deadline extension, please click here: https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers?_cldee=cHNocmlkZXJAdGFiZW4uY29t&recipientid=contact-1c2b4b51e8d4e51180eb3863bb368b18-f443a4ea25cc4149a3419e6114bdbb64&esid=e97b04b5-126e-ea11-a811-000d3a4df348

# Commuter Benefits

**Can my employees who participate in our Commuter Benefits program change or cancel their existing transit and parking orders? Can they reinstate them when they come back to work?**

Yes, Commuter Benefits as defined under Section 132 of the IRS code are changeable on a month-to-month basis and can be paused or reinstated based on each employee's needs. See https://www.naviabenefits.com/covid-19-benefit-tips/ for additional information and guidance that Navia has provided to employees on this topic.

# Health Reimbursement Arrangements

**How does a change in an employee's health care eligibility status affect their HRA's?**

Most HRA plans are defined as a component of the employee's overall health care coverage, and eligibility for HRA reimbursement follows and aligns with the employee's eligibility for health insurance. HRAs that are specifically designed to reimburse vision/dental and other non-medical services can have separate eligibility rules and are not linked to health insurance eligibility.

# COBRA

**Are there any announced relief plans (tax credits, subsidies, deferrals, etc.) to help people pay COBRA premiums?**

At this time there has been no federal guidance regarding any relief or extension of COBRA premium payments. We recommend that QBs continue to make their payments within their 30 day grace period to ensure no loss of coverage.

**I want to offer subsidies to my COBRA Qualified Beneficiaries (QBs). How can I do that?**

Subsidies can be added to QB accounts through our employer portal. If you have more than 10 subsidies to enter please contact us at 866-831-6221 or cobraclient@naviabenefits.com for a template and we will upload one for you.

**Do I need to expedite COBRA coverage for a high-need employee?**

We notify carriers of enrollments the within the next business day after enrollment and after first payment is made by the QB.  Carriers typically process notifications within 8-10 days.  If a QB needs immediate medical care they should contact us at 877-920-9675 after they make their election and first payment.  For those that do not have an immediate medical need we ask that you allow the carriers the appropriate amount of time to process.

**Can Navia help me with my leave-of-absence (LOA) population?**

We do offer LOA billing services and are able to help.
Please contact sales@naviabenefits.com for more information.