

Managing Employee Leave and Terminations

When considering your employee benefits, there are distinct differences between how you treat terminated employees and those on unpaid leave. As an employer, it is important to understand these differences so that you can take the appropriate course of action with their benefits.

1) Termination from employment

What is a terminated employee? A termed employee is an individual that has officially been terminated from employment. In general, there is little expectation that the individual would be returning to work.

What do employers need to consider?

- A termed employee will generally need to be offered COBRA. COBRA gives workers and their families who lose their health benefits the right to choose to continue group health benefits. Key eligible plans include: medical, dental, vision, Medical FSA and Health Reimbursement Account (HRA).
- Upon termination, FSA participants have their full Medical FSA election available and can be reimbursed for dates of service while they were employed. Additionally, they may be eligible to COBRA their Medical FSA if their deposits exceed their withdrawals year-to-date.
- The specific rules regarding availability of an HRA to termed employees are generally outlined in your plan documents.

What happens if rehired?

- If rehired by the employer within one month of termination date, the individual can step back into their original benefits and election and make up contributions to meet any missed payments or deposits.
- If rehired by the employer in excess of one month from their termination date, the employee is entitled to open enrollment and may select new benefits and make a brand new FSA election. However, the FSA election cannot exceed the difference between what they had contributed towards their first FSA election and what the employer's plan maximum is.

2) Unpaid Leave Options

What is unpaid leave? Unpaid leave occurs when an employee has either voluntarily requested leave or been placed on temporary unpaid leave, but still remains employed by the company. In these cases, there is an expectation that the employee will return to work after a period of time.

Unpaid leave is not directly considered a COBRA qualifying event. However, you should reference the eligibility requirements for your plans to determine if a loss of coverage would occur. If a loss of coverage occurs, employees must be offered COBRA.

Assuming coverage would otherwise continue while an employee is on leave, there are a number of options and considerations for managing their benefits and payments.

- Revoke an FSA election** - Employees may choose to revoke their FSA election prior to leave and can make a new election upon returning to work. Claims would not be accepted for dates of service during the time that the election was revoked. Generally, the election is reduced to the amount contributed or the amount reimbursed, whichever is greater.
- Continue Coverage** - Employers should have a written agreement with the employee regarding the payment options used. For those who choose to continue coverage during leave, three payment options apply:
 - Prepay:** Employee voluntarily elects to make special pre-tax salary reductions that will cover their premiums and contributions while on unpaid leave.
 - Pay-as-you-go:** Employees could pay their share of premiums and contributions on an after-tax basis.
 - Catch-up deductions:** Upon returning to work, the employee may make catch-up deductions for coverage during the leave. The catch-up option may put the employer at added risk as the Uniform Coverage Rule is not suspended by such an arrangement; expenses incurred during the leave must be reimbursed up to the annual coverage limit (the election) as reduced by prior reimbursements.

Employers should always refer to their plan documents for plan parameters and seek legal counsel as-needed.