



Can we keep furloughed or laid-off employees on our group health plan?

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When an employee is laid off or furloughed, his or her hours are essentially reduced to zero, which can result in a loss of eligibility to participate in an employer's group health plan.

A group health plan will have written plan documents that outline the rules for that particular plan. Among these rules should be a definition of eligible employees, including how long an employee can be absent from work before the employee will lose eligibility for insurance coverage. For example, a plan might define an eligible employee as an individual who works at least 30 hours per week, and require that an employee who has worked less than 30 hours per week for four consecutive weeks must be removed from the plan.

As employers have some discretion in determining these parameters when designing and amending the group health insurance plan, each employer will need to review its own plan for compliance.

If the plan rules would not permit an employee on furlough or one who was laid off to be covered under the plan, then COBRA coverage should be offered (where applicable), which will protect both the employee and the employer. The danger in keeping ineligible individuals on the group health plan include:

- The potential loss of the tax-exempt status of the plan, causing both the employer and employees to potentially owe back taxes (as the pre-tax qualification would be lost).
- The insurance company could deny claims for those it determines are not eligible to participate in the plan.
- There may be COBRA violations for not sending out the required notices in time.
- A possible fiduciary breach under the Employee Retirement Income Security Act (ERISA) if plan assets were used to pay for benefits of non-eligible individuals.

If an employer's written plan documents do not address the absence from work or reduction in hours, the employer will need to amend the documents to include this information. The employer's plan administrator or benefits attorney can assist in this process. Plan amendments should not be taken lightly, and employers should avoid amending a plan for a specific circumstance, as circumstances will often change resulting in the need for further amendments. Additionally, while covering furloughed employees or former employees who were laid off may be done with the best intentions, having such a policy may not be sustainable over time for the employer.

Feedback

In light of the COVID-19 pandemic, several states have issued orders requiring or encouraging insurance companies to allow employers who wish to make changes to their eligibility requirements to do so. Some states have also included grace periods for premium payments. Employers will want to check the Department of Insurance (<https://www.iii.org/services/directory/company-categories/state-insurance-departments>) for the state their plan was issued in regularly to check for updates.

If an employee continues to remain eligible for the employer's group health plan during an unpaid absence, the employer will need to determine how to handle the employee's insurance premium payments. Many employers will provide employees with options similar to what is offered during FMLA leave, regardless of the reason for the absence. See [What arrangements may an employer make for an employee to pay health insurance premiums while on FMLA leave?](#) (www.shrm.org/ResourcesAndTools/tools-and-samples/hr-qa/pages/what-may-an-employer-make-for-an-employee-to-pay-health-insurance-premiums-while-on-fmla.aspx)

Once an employer determines that an individual is no longer eligible for the group health plan, most employers will be required to offer the individual and his or her covered beneficiaries continuation coverage through COBRA or a COBRA-like requirement under state law. Because COBRA continuation coverage can be expensive, some employers will cover some or all of these costs. See [Can we pay for a former or current employee's COBRA coverage?](#) (www.shrm.org/ResourcesAndTools/tools-and-samples/hr-qa/pages/canwepayforaformerorcurrentemployeescobracoverage.aspx)

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