



## Layoffs, Leaves of Absence and Benefits during COVID-19

Employers facing difficult business decisions right now may find themselves laying off employees. Others may be placing employees on leaves of absence because of industry slowdowns.

Insurance contracts generally require employees to be actively at work in order to remain enrolled in benefits. The known exception to this requirement is for FMLA approved leaves. But what about leaves of absence not covered by FMLA, because an employee is not sick or caring for a family member, but simply told they cannot work for a period of time (because there is no work)? If an employer is requiring employees take a leave of absence from work during the COVID-19 pandemic due to a business slow down, they have 2 main options.

**Check with your carrier.** If an employer wishes to keep employees actively enrolled in benefits, some carriers will allow an exception to the actively at work provision for situations where an employee is placed on leave, or even when they are laid off temporarily. If the contract does not already contain this language, a call to the carrier is required to check on their willingness to extend coverage to employees who will not be actively at work for a period of time. This period may be a week, or up to 60 days. If the carrier allows this exception, having it in writing is best. Keep in mind full premium will be due for this period. The current employer employee share may remain in place, but given employees may not have not been receiving wages, employers may consider paying the full premium for this period.

**If Carrier will not make an exception, or the employer does not wish to request an exception, COBRA election Notices must be sent.** If employees who are currently enrolled in benefits are going to be laid off, or placed on an unprotected leave of absence and no exception will apply, COBRA election notices must be sent. Employers may wish to pay the full COBRA premium for a period of time to assist these employees. Ensure any plans to pay COBRA premium is communicated in writing, with the designated amount of time this payment will continue. Upon rehire, all employees should be reinstated on benefits immediately with no waiting period.



## COMPLIANCE

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If the business ceases to exist entirely, COBRA generally cannot apply as there is no underlying plan to attach COBRA rights. But as long as 1 employee remains on payroll, COBRA will continue.

Employers should remind affected employees that a loss of coverage is a qualifying event, allowing them to have a special enrollment in the state marketplace, for which they may be subsidy eligible (with no penalty to the employer once the employee is no longer 'employed').

### **Employer Action:**

Employers should ensure they follow the COBRA rules when terminating benefits. Any termination of employment, absent carrier exception, requires a COBRA election notice be sent to affected employees (and dependents if they reside at a different address) within 14 days of termination.

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