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# Back to Business: Employee Benefits

## Video Transcript

As companies consider returning to full operation in the wake of the COVID-19, they will need to adapt to providing benefits while managing the new realities imposed by the global pandemic. In this alert, as part of an ongoing series, Back to Business Considerations in the Wake of COVID, we'll explore issues related to employer-provided benefits.

Employer benefits have not stopped during the pandemic. When we started furloughing employees, clients were asking us questions about coverage protection, retirement plan issues, and how to determine changes to benefits if companies had to make the difficult decisions to furlough workers. And we're now beginning to answer questions about what companies need to consider when their employees return to work. Let's begin with health plans. There are three general things to consider as employees return to work:

- Eligibility
- Elections
- Payment

First, let's consider eligibility. For employees working at home, there should be no impact on benefits, because they are still eligible. But if employees have been furloughed or their hours have been significantly reduced, they may have lost eligibility entirely or may have become eligible for COBRA. Employers need to make sure employees are re-enrolled in active coverage. Furloughed employees returning to their same position are likely eligible again, but employees who are still working reduced hours may not be eligible yet, depending upon the terms of the employer's plan.

The second issue is elections. If employer elections were turned off as a functional matter, those elections now must be turned back on. When the employee becomes eligible again, which might require changes in multiple places, including payroll, human resources and vendor files that need to be updated.

Remember this process may not be the same for a self-insured health plan as it would be for an insurance plan. If the benefit is insured, the employees are dropped from coverage; then that benefit has to be reinstated, or the employer risks being responsible for the cost of any claims. For example, life insurance requires premium payments to the insurer for coverage to be in place. If an employee dies and the insurer does not currently consider the employee covered, the employer would probably be responsible for payment. You should also be considering whether changes to eligibility allow an employee to make changes to cafeteria plan elections. You should consider whether changes to the dependent care elections are necessary because care is no longer available. Consider the impact on employees who have been furloughed and would be unable to make claims for periods in which they were not working. You may also receive questions about changes to health savings account contributions and changes to transportation benefit elections.

The last is the payment issue. If as an employer you pay the premium as long as an employee was on furlough or reduced hours, you may now want to try to recoup some of the premium payments paid on behalf of furloughed workers. Generally, that is not possible under law unless an agreement was made ahead of time, but that depends upon state law.

Let's consider the retirement plan. For employers of furloughed workers who are coming back, you need to consider what happens to retirement plan eligibility. Some questions to consider: Have you reviewed your plan documents to determine if

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eligibility or investing was impacted by furlough and whether any changes need to be made upon returning to work? Employees who were furloughed may want to increase their contributions to the plan so they can max out this year. How do you confirm that elections changes for retirement plans have been reimplemented? Are you watching participant numbers in your retirement plan? If some but not all furloughed employees come back and if there are layoffs, the participant numbers must be closed to review, to ensure that the retirement plan does not experience a partial termination because of the sharp reduction in the number of participants who would ultimately require full investing of benefits. Employers should also be prepared for an increase in hardship requests and other distributions. There are really a host of issues that you should discuss with our Employee Benefits team. Venable is actively monitoring these issues and working with clients to evaluate and respond to other emerging business legal and operational challenges arising from the pandemic. Please visit our COVID-19 Resource Center at [Venable.com/COVID-19](https://www.venable.com/COVID-19) to explore our extensive collection of analysis, webinars, and other relevant insights. Thank you and stay safe.

## Links

[Venable.com/COVID-19](https://www.venable.com/COVID-19)



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