



# COVID-19 UPDATE: FSA ELECTIONS

During The COVID-19 pandemic we understand that many of the changes that have occurred can be overwhelming. FBA is here to keep you up-to- date on information that pertains to you. With a change in the IRS regulations due to COVID-19, the information below contains general information in hopes to help shed some light on questions about the topic of FSA Elections.

*Q: Can health FSA elections be changed if a member has set aside funds for a procedure that has now been postponed or canceled due to COVID-19? Does the IRS have a position on this?*

A: At this time, the dates of service should be within the plan year for an FSA. Little flexibility is being allowed for a change in health FSA elections due to a change in the circumstances regarding a participant's anticipated medical expenses. Failure to incur anticipated medical expenses is not a change in status or other events that permits an election change. The IRS has not announced any exceptions to this yet. We anticipate more information to follow.

*Q: Can employers extend the FSA run-out deadline?*

A: Employers can extend the run-out deadline to their preferred length. Currently, the guidance does not specify a maximum length for a run-out period, but it should end within a reasonable period after the end of a plan year. The IRS announced a 90-day extension for federal income tax filing and HSA contributions (until July 15, 2020), a similar 90-day extension of the run-out period would seem to be reasonable. No matter the extension length, employers must notify their employees of the change and document the change in the plan document.

*Q: What documentation should a plan to keep if substantiation requirements are softened?*

A: Softening the substantiation requirements is not recommended. The IRS has not indicated that HRA or FSA plans will be exempted from the applicable third-party substantiation requirements.

*Q: What guidance is available for employees with medical FSAs that have been laid off for an unknown period? Are we allowed to "pause" their deductions and pick back up where they left off when they eventually return? If these employees are gone for 30+ days, do they need to be treated as new employees when they return?*

A: If an employee who is indefinitely laid off or furloughed generally loses FSA eligibility because they are no longer working the hours needed to meet the minimum eligibility requirements of the plan. For example, 30 or more hours per week must be worked for eligibility. The loss of eligibility will trigger a right to elect COBRA coverage under a health FSA if the employee's health FSA is "underspent." If the FSA terms are modified for eligibility during the furlough period, there will be no loss of eligibility, therefore no right to change the employee's election. If the employee fails to continue paying the cost of coverage the participant's coverage will end. If eligibility is lost due to a layoff or furlough and the employee is absent for 30 days or longer, they will be entitled to make a new cafeteria plan election upon return to service, so long as the new election is permitted under the terms of the plan.



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*Q: Will health FSA coverage continue during a furlough or temporary layoff?*

A: Coverage under a health FSA generally would terminate upon a furlough. This is since an employee is likely no longer working the minimum number of hours required to maintain FSA eligibility. It may, however, depend on the plan terms and how the furlough is implemented. An example, if an FSA requires a minimum of 30 hours per week to be eligible and an employee is regularly working 40 hours per week (8 hours per day) but will be furloughed one day per week, the employee likely will continue to be eligible for the FSA, because the employee is still working 32 hours per week.

*Q: With an unpaid layoff/furlough, will participants be able to claim medical expenses incurred during the layoff once they are back to work?*

A: The answer is yes, so long as the plan document is amended to reflect that and all of its employees are notified and treated the same way. Eligibility for coverage would need to continue through the layoff/furlough.

FBA will continue to keep you informed during this hectic time. Be safe.