

COVID-19 FAQ: Employee Benefits Considerations for Companies Facing Temporary Closures/Ramp-Downs

MARCH 20, 2020

My company may need to temporarily close or significantly reduce operations due to COVID-19. What benefits-related issues should we consider?

- **Plan eligibility** – Review plan eligibility provisions to consider how reduced hours, extended leaves of absence, alternative work arrangements, temporary layoffs, etc. will impact employee eligibility under the plan. Employers should be careful about changing eligibility rules in response to the COVID-19 epidemic without consulting with insurance carriers, stop-loss insurers, third-party administrators, and legal counsel.
 - For variable-hour employees (for employers using the look-back method for determining medical plan eligibility), a reduction in hours may not impact medical plan eligibility for the current plan year, but could negatively impact eligibility for the next plan year.
 - Employers should ensure that employment terminations and other employment status changes that trigger loss of health plan coverage are reported to the COBRA administrator.
- **Payment of plan premiums** – Employees may not be able to pay their share of benefit plan premiums through payroll deductions. Consider options for preventing inadvertent termination of coverage, such as allowing employees to pay contributions by check, or setting up a repayment schedule once regular operations resume. If it's possible that pay will not be sufficient to cover all contribution requirements, employers should consider the order of taking deductions for various employee benefits (e.g., prioritizing medical plan contributions). Some employers have also explored the idea of premium holidays. Before offering a premium holiday, employers should consider whether there are any cafeteria plan issues with stopping or reducing employee contributions and how to effectively transition back to normal cost-sharing.
- **401(k) deferrals** – If wages and salary are still being paid to certain employees, employers must continue to take 401(k) deferrals from their eligible pay unless employees elect to discontinue. Plans with matching or other employer contributions must continue to fund those contributions, unless the plan is amended to discontinue employer contributions. Some types of “safe-harbor” 401(k) plans may face regulatory hurdles in discontinuing employer contributions in the middle of a plan year. Some employers have contemplated sending a reminder to employees of their right to discontinue making 401(k) deferrals at any time, so they can maximize current pay. Employers facing temporary closures should ensure that key employees who process 401(k) deferrals from

payroll are not laid off or severed, since the U.S. Department of Labor imposes fines on employers who experience delays in funding employee deferrals into their 401(k) plans.

- **401(k) loan repayments** – Employers may allow employees who are on layoff or unpaid leave of absence to delay repayment of 401(k) loans for up to 12 months. However, this 12-month period cannot extend beyond the IRS maximum limits for loan repayment. When the employee returns, the loan must be reamortized, or the missed payments and interest repaid in a lump sum. Some plans allow terminated employees to continue paying off plan loans, typically by check or automatic debit from a bank account. Employers should consult with their 401(k) record-keeper to determine if this option is available in their plans.
- **Benefit election changes** – Employees may be eligible to make changes to their health and welfare benefit coverage elections for myriad reasons, such as a reduction in hours affecting eligibility or loss of other coverage through a spouse’s employer. Employees may want to review dependent care flexible spending account elections if child/elder day care needs change, as well as commuter plan contribution elections. For employees not already covered under a benefit plan, the cafeteria plan rules generally don’t permit mid-year enrollments unless the employee has experienced a change in status or some other event permits a mid-year election change under the cafeteria plan rules.
- **Benefit payment amounts** – For benefits tied to compensation – for example, if a disability benefit is a percentage of pay – consider the impact of temporary reductions in pay on benefit levels.

If you have further questions, contact your Winston relationship attorney for more information or regarding your specific circumstances.

View all of our COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

3 Min Read

Authors

[Anne Becker](#)

[Amy Gordon](#)

[Susan Nash](#)

[Jamie Weyeneth](#)

Related Locations

Chicago

Washington, DC

Related Topics

COVID-19

Health & Welfare

Related Capabilities

Labor & Employment

Employee Benefits & Executive Compensation

Health Care

Related Regions

North America

Related Professionals



Anne Becker



Amy Gordon



Susan Nash



Jamie Weyeneth

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.

