

IS COVID-19 RESULTING IN CHANGES TO YOUR BENEFIT PLANS? IF SO, BE SURE TO DO YOUR DUE DILIGENCE.

Businesses are facing many difficult decisions given the COVID-19 (coronavirus) pandemic in our country. Employers are facing potential reductions to their workforce, furloughs, and layoffs. With these actions come adjustments to an organization's health and welfare plan offerings that may be temporary or permanent. If you are considering furloughs or reduction in hours for your employees, it is important that you communicate the impact this change may have on employees' eligibility and continuation of coverage under your various plan offerings. Most plans contain a minimum work hour requirement to be eligible for coverage. Thus, reducing hours, yet maintaining enrollment in your health plan may not be allowed per your plan or vendor document. It is prudent that you work with your advisors and vendors to ensure that plan modifications will not result in coverage being lost for employees who are currently enrolled.

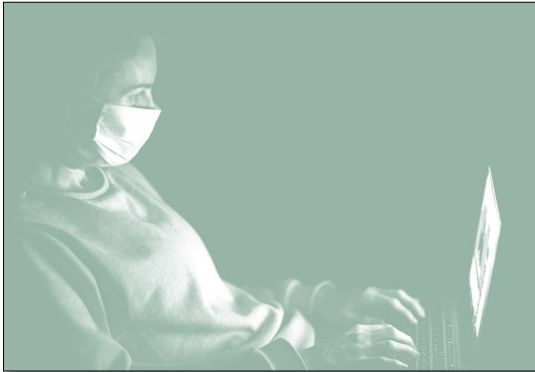
It is important for employers to review all of their employee benefit plans, policies and vendor contracts to assess the impact their actions may have on the administration of their health and welfare plans. With this in mind, below are some areas which may be overlooked and should be considered when exploring options for managing health and welfare plans during this pandemic.

Section 125 Cafeteria Plan Compliance: When furloughed or placed on reduced work hours, i.e., change in employment status, the Section 125 rules do not permit an employee to make a benefit plan change to their enrolled coverage unless the election is consistent with the nature of the event. As such, employers should carefully review their cafeteria plan documents to assess the circumstances that would allow participants to make a change to their coverage. Additionally, employers should amend plan documents as necessary to provide participants with additional enrollment/disenrollment options, e.g., how does your plan define a reduction in work hours or furloughs or is the plan document silent? What is the impact to employees' benefit enrollment should this occur?

Employer Mandate: The Affordable Care Act (ACA) Employer Mandate requires that employers with an average of at least 50 full-time employees must provide health insurance to those individuals working 30 or more hours per week. The coverage offered must be of minimum value and affordable to employees in order to avoid a tax penalty under Section 4980H of the Internal Revenue Code. This has led to employers being required to track employees' work hours (measurement period) to determine medical plan eligibility. When considering furloughs or reductions of employees' work hours, use of a prior measurement period permits employers to consider that participants who are full-time employees retain their full-time status for the balance of the plan year, even if they are no longer full-time. For calendar months in which full-time status is retained and the medical coverage is not affordable, a tax penalty under Code Section 4980H (b) can be assessed if employees obtain subsidized coverage through the Federal Marketplace. Thus, to avoid potential penalty assessments, when considering furloughs or reduction of employee

Taking
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work hours, employers may want to consider offering a subsidies to assist with the employees’ cost of coverage.

For self-insured plans, when making a decision to subsidize coverage, employers need to assess if this action will result in potential discriminatory practices, i.e., whether you offer certain employees coverage while denying coverage to other similarly situated employees.

Also, once the coverage subsidy ends, is this considered a qualifying event to allow an individual to seek coverage on the federal

Marketplace? The answer to this question is not clear. The ACA regulations do not allow for a special enrollment period for any individual who voluntarily drops COBRA coverage; however, HealthCare.gov states that an individual qualifies for a special enrollment period if an employer stops contributing to the individual’s COBRA coverage. As such, it is prudent for employers to complete their due diligence and research options thoroughly prior to proceeding with implementing a change.

Life and Disability Plans: Employers need to be mindful that when considering furloughs or reductions of employee work hours that this will also affect the compensation for their employees. Thus, employees will or may likely experience reductions of the benefit provided under their life and disability plans. For example, if an employer reduces an employee’s compensation, and the life insurance is a multiple of their earnings, life insurance potentially reduces, based on the plan’s definition concerning how the benefit amount is determined, e.g., current salary, salary as of December 31 of the prior year, etc. Thus, as noted below, understanding your vendor contract provisions is paramount when making decisions concerning work hours.

Vendor Contracts: Employers should carefully review the terms of the vendor contracts that they have in place . It is critical that all material provisions and terms are understood prior to implementing benefit plan changes. For example, vendor contracts may often state that if an employer reduces the number of covered lives by a certain defined percentage, the vendor may re-rate the policy. Thus, a reduction in your workforce may have an adverse impact on the premiums you pay. Again, it is best to work with your advisors and vendors to fully assess and understand all impacts and options prior to making any changes. Under the current pandemic crisis, most vendors are being flexible on the enforcement of some of the contractual provisions. However, as a fiduciary, an employer should not assume that this is the case with all vendors.

Employers are facing mounting decisions that need to be made as the pandemic continues. Finding a balance between business operations, continuity, and the care for your employees is not easy during these uneasy times. However, taking appropriate and deliberate steps in managing your plans is essential to avoiding potential issues in the near future.

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