

What happens with Flexible Spending Accounts when an employee is furloughed?

Medical or Limited Medical FSA:

During these challenging times with COVID-19, many employers are faced with furloughing employees. Under a furlough, the employee is not terminated but is on a leave without pay with the intent to return to work later. As a furloughed employee, they are still considered active employees and may still be eligible to remain on some benefits, such as medical plans, with relaxed eligibility under COVID-19. What happens with the Medical or Limited Medical FSA under a furlough?

Scenario 1: An employer decides to pay all benefits. Does this include the FSA?

An employer has furloughed employees and will pay the cost of all benefit options for employees during the furlough. This, of course, assumes the employee is still eligible for all benefits during furlough. The offer to pay all costs would include the Medical FSA; when in reality, the employer may not have intended to include the FSA contributions as part of the benefit options they are paying.

- Note: When paying the FSA contributions for employees during furlough, the employee may not return to work and the employer would not have the option to capture the missed contributions from the employee via payroll deductions.

Scenario 2: An employer decides to pay all or some benefits, but not the FSA.

An employer may choose to continue paying the full/partial costs of the benefit options, subject to eligibility and carrier requirements. Additionally, under this scenario, the employer does **not** choose to fund the FSA contributions on behalf of the employee.

- It is important to notify the FSA administrator and have a leave of absence date placed on the FSA. Why? This suspends future contributions, access to use the flex card, and the reimbursement of any expenses incurred after the leave date.
- If the employee returns to work before the end of the plan year, they will have the option to catch up the missed contributions which will reactivate the flex card, along with the ability to file claims for expenses incurred during the leave and through the remainder of the plan year.

- Employees may also choose to send the employer the FSA contributions on a post-tax basis while on leave. This allows the FSA administrator to reimburse claims while the employee is on leave, up to the date of the last contribution paid.
- The employee may return to work and opt not to catch up missed FSA contributions, ending their participation when the leave began.

It is important for the employer to understand that under either of these scenarios, the employee has the ability to submit claims for expenses incurred prior to the furlough/leave date and reimbursements will be based on the annual election, not the amount contributed at the time of the furlough.

Example #1: Employee elects \$1000 for a calendar year, or \$41.66 per pay. At the time of the furlough (April 1) the employee has contributed \$249.96. The employee has only claimed \$100 at the time of furlough. The employee submits a claim for an expense prior to 4/1 for \$900. The claim would be reimbursed at \$900 completing the amount elected for the year. The employer is still responsible for funding the reimbursement up to the annual election.

Example #2: Employee elects \$1000 for a calendar year, or \$41.66 per pay. At the time of the furlough (April 1) the employee has contributed \$249.96. The employee has only claimed \$100 at the time of furlough. The employee submits a claim for an expense incurred 4/3 for \$900. The claim would NOT be reimbursed because it was incurred after the furlough began.

DEPENDENT CARE FSA:

The most commonly requested change relating to COVID-19 is a change to the Dependent Care FSA. As many employees are now at home with their children, they are experiencing any of the following:

- Daycare, pre-school and before/after school programs are now closed due to COVID-19.
- Summer programs are canceled.
- Employees are now working from home so childcare is not needed.
- A change in the cost of childcare due to a necessary change in providers resulting from closures.

There is no requirement under Section 125* rules for employers to request specific documentation beyond the employee's certification of the event. This can be an email request retained in the files of the change needed and the reason for the change.



Under current Section 125 rules, most plans allow election changes for employees to revoke or change their Dependent Care FSA election to a different amount, affecting future contributions by payroll deduction. For most plans, this means Plan Amendments or summary material modifications are not needed for the examples above.

It is very important to note, any funds remaining in the Dependent Care FSA will remain available only for dependent care expenses and cannot be transferred to a Medical/Limited Medical FSA. Unclaimed funds for Dependent Care will be forfeited at the end of the plan year and run-out period.

*Note: Any reference to Plan Amendments and summary material modifications are specific to Section 125 Cafeteria Plan documents. Employers may need changes to their ERISA plan documents, which is separate and not related to Section 125.

For any questions or concerns you may have regarding your Section 125 Plan, please feel free to reach out to BeneFlex at 757-455-6600 (toll free 888-531-3539) or contact Tammy Farmer at tammy@beneflexonline.com.