



The client will first have to determine how they are approaching the reduction in hours/workforce.

**At what point is an employee NO LONGER eligible?**

The employer will need to decide how long an "employee" is an "employee" not only for the FSA, but also for all other benefits. Both situations detailed below include **unpaid** leave that causes ineligibility as well as termination/rehire situations. In a paid leave situation, the client would just carry on business as usual with deductions. Where unemployment is involved, it is considered prudent to go ahead and offer COBRA to the loss of eligibility date.

**Unpaid leaves:**

**#1 – Duration of less than 30 days**

Participant must step-back into their original election; however:

Expenses incurred during the period of non-coverage would not be eligible.

The employer would be prohibited from "catching up" salary reductions upon the employees return.

Example: Mary elects \$1,200 in health FSA coverage, terminates on June 30, and is reemployed on July 16. Thus, Mary's \$1,200 election is automatically reinstated for the remaining 5-1/2 months of the plan year. She also resumes making salary reductions of \$100 per month. However, her total salary reductions for the remainder of the plan year are \$550 – she does not pay the \$50 for the 15 days that she was gone. Expenses incurred during this 15-day period would not be covered unless Mary elected COBRA coverage for that period.

**#2 – Duration of 30 days or longer**

The employer is permitted to offer the following options:

Allow the participant to make a new election;

Require that the participant's original election be reinstated; or

Keep the participant out of the plan until the next open enrollment period.

Once an employee on unpaid leave ceases to be an active employee, they are considered terminated. Flex benefits cease when an employee is no longer "eligible" to participate. Only claims incurred prior to the date of termination are reimbursable.

Monies deposited prior to termination will be forfeited if the employee did not incur any eligible expenses during active employment.

**FMLA Leave of Absence for Companies Employing 50 or More**

Employers with 50 or more employees should consult with their benefit advisors to determine their benefit obligations under the Family Medical Leave Act (FMLA).

For employees who continue coverage, contributions may be made in one of three ways: 1) prepay, 2) pay-as-you-go or 3) catch-up contributions.

**Health FSA COBRA**

In the event of a layoff where unemployment is involved, COBRA would be offered for the FSA just like other insured benefits. However, only health care flexible spending account participants with a positive balance (actual deposits exceed YTD claims) are eligible for COBRA continuation. It is our understanding any amounts attributable to the \$500 carryover (if offered by the employer) should not be included in this calculation.

Electing COBRA for flexible spending accounts permits the terminating employee to continue deposits on an after-tax basis, for a period of time as specified by COBRA. This will entitle the participant to make withdrawals up to the full limit of his/her annual election.

Terminated employees who 1) are not eligible for COBRA or 2) do not choose COBRA continuation may continue to submit Flex claims after their date of termination for expenses *incurred prior to* termination.