

# Employee Benefit Plan Review

## COVID-19 Resource Guide for Human Resources Professionals: Employee Benefits Considerations for Reopening in 2020

BY REBECCA ALPERIN, MAMTA K. SHAH, LISA K. SHALLUE,  
 LYNNE WAKEFIELD, AND EMILY D. ZIMMER

**C** OVID-19 continues to throw us curveballs. While some states that were continuing on their path to recovery are having to backtrack, others have managed to temporarily halt the progression of COVID-19 and are proceeding as planned. Amidst all this uncertainty, one thing is certain: human resource professionals continue to face overwhelming obstacles.

For many, the focus may have shifted to retrofitting their workplaces for compliance with Centers for Disease Control and Prevention, Occupational Safety and Health Administration, and state regulations, or implementing continued work from home orders or staggered staffing schedules.

This article outlines issues that human resource professionals are likely to face as they onboard furloughed and laid-off employees and think about balancing cost considerations with utilizing and leveraging employee benefits programs to assist employees as they navigate personal economic challenges.

### ONBOARDING FURLOUGHED EMPLOYEES

#### A. Health and Welfare Plans

1. For employees enrolled in one or more employer sponsored health and welfare

plans and receiving coverage during the furlough period:

- a. Payroll deductions for required employee contributions for the plan generally resume upon return from furlough, subject to any changes in employment status that may affect eligibility;
  - b. To the extent repayment of employee contributions advanced during the furlough period is required, consider how to collect the employee contributions (e.g., through payroll deduction or otherwise), keeping in mind state law requirements related to payroll deductions; and
  - c. Consider the extent to which election changes may be made upon return from furlough.
2. For employees not enrolled in an employer sponsored health and welfare plan during the furlough period (or enrolled in COBRA continuation coverage):
    - a. Determine when eligibility for the plan resumes in accordance with plan terms (e.g., immediately or after a waiting period), subject to

- any impact on eligibility due to changes in employment status; and
  - b. Consider the process for enrolling employees and the extent to which election changes may be made upon return from furlough, including any special enrollment rights under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).
  - 3. Evaluate the impact of the furlough on employees’ full-time status under the Affordable Care Act’s (“ACA”) lookback measurement period and stability period requirements.
  - 4. Evaluate the impact of return from furlough on participation in wellness program activities and eligibility for wellness program incentives.
  - 5. To the extent employees will have staggered work schedules, consider entitlement to benefits based on reduced hours (FT/PT) or new job requirements and whether any plan amendments are needed.
- B. 401(k) Plans**
- 1. Generally, employee and company contributions resume upon return from furlough; however, changes in job titles or positions may affect eligibility.
  - 2. Determine whether employee and company contributions will resume immediately upon return from furlough based on elections in place immediately before the furlough period or whether new elections will be required.
  - 3. Determine the extent to which legally required notices relating to plan participation must be provided.
  - 4. Address the treatment of loan repayments upon return from furlough.
  - 5. Determine the extent to which the period of furlough must be counted for purposes of plan eligibility, vesting and the right to allocation of contributions.
- C. Pension Plans**
- 1. Consider whether changes in job titles or positions may affect eligibility for continued participation upon return from furlough.
  - 2. Review plan terms to determine the extent to which the period of furlough must be counted for purposes of plan eligibility, vesting and benefit accrual.
- D. Other Benefits**
- 1. Consider the impact of return from furlough on any commuter benefits (parking and transit).
  - 2. Consider the impact of return from furlough on vacation and holiday accrual.

### ONBOARDING EMPLOYEES WHO HAVE BEEN LAID OFF

- A. Health and Welfare Plans**
- 1. Treat rehired employees who have been laid off as new hires who must complete new hire paperwork for health and welfare plan eligibility.
  - 2. Consider the impact of the termination of employment and rehire on the employee’s status as a full-time employee under the ACA’s lookback measurement period and stability period requirements.
- B. Qualified Retirement Plans**
- 1. Defer to plan terms and break in service rules for purposes of determining the impact of the layoff on plan eligibility, vesting and benefit accrual.
  - 2. Review plan terms and procedures for enrolling rehired employees in 401(k) plan, including application of plan’s auto-enrollment feature, if any.

### OTHER HEALTH AND WELFARE PLAN CONSIDERATIONS

- A. Consider enhanced Employee Assistance Program offerings for employees in light of the COVID-19 pandemic.
- B. Evaluate benefits implications of required temperature checks, contact tracing, COVID-19 testing or other screening measures (e.g., under ERISA, HIPAA, and other laws impacting health and welfare plans).
- C. Address the extended time periods for exercising HIPAA special enrollment rights, COBRA election, and premium payment periods and filing claims and appeals by contacting vendors and third-party administrators, communicating to participants and amending plan documents accordingly.
- D. Determine whether to take advantage of Internal Revenue Service guidance providing enhanced flexibility for mid-year election changes and, if so, communicate the changes to participants and amend plan documents accordingly.
- E. Determine whether there will be any changes to health and welfare plan benefits for 2020 or 2021 in light of the COVID-19 pandemic, communicate the changes to participants, and amend plan documents accordingly – note that accelerated notice requirements apply in the case of a significant reduction in health benefits.

### OTHER QUALIFIED PLAN CONSIDERATIONS

- A. Consider whether layoffs resulted in a partial plan termination requiring full vesting.
- B. Consider whether layoffs triggered a Form 10 filing requirement for defined benefit pension plans.
- C. Determine whether there will be any suspension of or reduction

in employer contributions, communicate the changes to participants, and amend plan documents accordingly.

- D. Address the extended time periods for filing claims and appeals by contacting vendors and third-party administrators, communicating to participants, and amending plan documents accordingly.
- E. Compile a list of changes made to qualified retirement plans based on COVID-19 guidance and consider whether additional participant communications and/or plan amendments are needed.

#### REPORTING AND DISCLOSURE CONSIDERATIONS

- A. Evaluate proper disclosure of furloughed and laid-off employees on ACA Form 1095 and 1094 reporting.
- B. Evaluate the impact of new e-disclosure regulations on qualified retirement plan disclosure.

#### FIDUCIARY AND GOVERNANCE ISSUES

- A. Assess the impact of recent market events on trust assets and investment options.
- B. Ensure that investment and benefits committees are continuing to meet on a regular basis, or more often, if needed, even if meetings are “virtual.”

#### PLANNING FOR REMAINDER OF 2020 AND FOR 2021

- A. Consider the design of compensation arrangements and nonqualified benefit plans and programs – taking into account, among other things, changes in employee demographics, providing employer flexibility to tie company performance to employer-paid benefits, and contributions and to make mid-year changes.
- B. Evaluate the design of and performance metrics for incentive and bonus programs.
- C. Consider early retirement programs and voluntary separation

programs in light of any potential longer-term workforce changes.

- D. Preserve flexibility to suspend or reduce employer contributions to qualified plans.
- E. Review qualified plans for (or adopt) provisions enabling participants early access to vested accounts (i.e., hardships, loans, early distribution provisions).
- F. Explore alternative employer provided assistance programs for impacted employees, such as Section 139 disaster relief payments, disaster mitigation payments, interest free loans, leave banks, and charitable funds. 🌟

Rebecca Alperin ([rebecca.alperin@troutman.com](mailto:rebecca.alperin@troutman.com)) and Lisa K. Shallue ([lisa.shallue@troutman.com](mailto:lisa.shallue@troutman.com)) are counsel at Troutman Pepper Hamilton Sanders LLP. Mamta K. Shah ([mamta.shah@troutman.com](mailto:mamta.shah@troutman.com)), Lynne Wakefield ([lynne.wakefield@troutman.com](mailto:lynne.wakefield@troutman.com)), and Emily D. Zimmer ([emily.zimmer@troutman.com](mailto:emily.zimmer@troutman.com)) are partners at the firm.

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