

Workforce Composition Alternatives

# **Furloughs: Assessment, Planning and Implementation**

April 10, 2020

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# 1

## Introduction

Current as of: April 7, 2020

This document captures key employer considerations for furloughs in response to COVID-19. The document is intended to serve as an internal reference guide to support you in your conversations with clients – not to be shared as-is with clients. Mercer is in a unique position to help our clients make the right decisions about these actions and to help them execute effectively.

- A “**furlough**” is a temporary leave from work that is not paid and is often for a set period of time
- Furloughs can be an effective cost containment strategy for employers who are facing cash flow issues
- Employees who are furloughed may be considered the common law employees of the organization during the temporary leave period – employers must confirm with legal counsel
- Benefits may continue during furloughs

If you have a question that is not addressed here or on the Coronavirus Community, please email it to the COVID-19 Core Team (COVID-19\_Inquiries@mercer.com) and it will be directed to the appropriate subject matter expert. You can expect a reply within 24 hours.

It is important to note that while our consultants are very familiar with the design, administration and operation of employee benefit plans and the law applicable to those activities, Mercer is not a law firm. Therefore, our recommendations should not be construed as, nor are they intended to be, legal advice.

## 2

# Assessment

Before executing a furlough, each employer should be certain that a furlough is the right approach. Specifically, the company needs to consider the projected business scenarios (e.g., revenue volatility, cost management objectives) and decide if a furlough is the appropriate strategy. As part of this evaluation, other cost management actions (e.g., deferrals, reductions) and other workforce composition actions (e.g., reduced hours/schedule, layoffs, reductions in force, voluntary separation, early retirements) may be considered.

Once an employer has made the decision to pursue a furlough, the following steps are critical:

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| Decisions Needed | <ul style="list-style-type: none"> <li>• How long will the furlough be?</li> <li>• Which groups will be furloughed?</li> <li>• What compensation will be provided for furloughed/non-furloughed groups?</li> <li>• Will health and welfare benefits be continued, terminated, or adjusted for furloughed groups?</li> <li>• What are the key messages and commitments, including the business rationale and a review of the decision making process, tailored for the audiences?</li> </ul>   |
| Analysis         | <ul style="list-style-type: none"> <li>• Scope furlough action: <ul style="list-style-type: none"> <li>○ Critical talent</li> <li>○ “Essential” roles, if any</li> <li>○ Re-deployment, intra-company</li> <li>○ Potential for job-sharing inter-company (e.g., other companies, local labor market needs)</li> <li>○ Other workforce segmentation considerations</li> <li>○ Operational support needs</li> </ul> </li> <li>• Benchmark peer actions on furloughs (<a href="#">Mercer spot survey</a>)</li> <li>• Perceived “fairness” of actions for different workforce groups</li> <li>• Contract &amp; plan document review, including documenting the furlough’s impact on each line of coverage, including financial implications for employees and carrier liability for “new” risk</li> <li>• State and Federal regulatory review <ul style="list-style-type: none"> <li>○ Potential limitations for collective bargaining units and discrimination testing (e.g., age, protected classes)</li> <li>○ What is the corresponding impact on the company’s ability to access government assistance?</li> </ul> </li> <li>• Employer policy review, including PTO, length-of-service, rehiring</li> </ul> |
| Employee Impact  | <ul style="list-style-type: none"> <li>• Does the employer cover public employees? (if so, different employment rights may apply)</li> </ul>  |

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|  | <ul style="list-style-type: none"><li>• Do impacted employees have access to subsidized health coverage via health care exchanges or Medicaid/Medicare?</li><li>• What subsidies provided through the CARES act are accessible to the organization and to employees?</li></ul> |
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### 3

## Planning & Implementation

Once an employer has decided to execute a furlough, the following planning work is required to develop a detailed execution strategy:

|                                 | Planning   | Implementation<br><i>(will vary by employer, based on determinations made in planning stage)</i>   |
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| Initial Actions                 | <ul style="list-style-type: none"> <li>Define selection criteria accounting for:               <ul style="list-style-type: none"> <li>Critical talent</li> <li>“Essential” roles, if any</li> <li>Re-deployment, intra-company</li> <li>Potential for job-sharing inter-company (e.g., other companies, local labor market needs)</li> <li>Other workforce segmentation considerations</li> <li>Operational support needs</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>Communicate details of the furlough to impacted groups</li> </ul>   |
|                                 | <ul style="list-style-type: none"> <li>Determine the initial length of the furlough and the employees impacted</li> </ul>  |  |
|                                 | <ul style="list-style-type: none"> <li>Conduct analysis to ensure perceived “fairness” of actions for different workforce groups               <ul style="list-style-type: none"> <li>Test the likely perception of fairness by drafting and reviewing the announcement of the action early in deciding what actions to take</li> </ul> </li> </ul>  |  |
|                                 | <ul style="list-style-type: none"> <li>Project and analyze corresponding productivity impacts for any workforce composition action taken</li> </ul>  |  |
| Employer Policies and Decisions | <ul style="list-style-type: none"> <li>Determine compensation treatments for the impacted workers (e.g., salaried, non-exempt).</li> <li>Will workers continue to receive any level of compensation?</li> <li>If employees will receive partial compensation, will pay-based benefits be based on full pay or reduced pay? Will pay-based contributions be based on full pay or reduced pay?</li> </ul>  | <ul style="list-style-type: none"> <li>Implement applicable policy changes and update documentation</li> <li>Document rehire policies and communicate to furloughed employees</li> </ul> |

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|                 | <ul style="list-style-type: none"> <li>How will employees on paid or unpaid leave at the time of the furlough – whether or not the leave is related to COVID-19 or not – be impacted?</li> </ul>  |  |
|                 | <ul style="list-style-type: none"> <li>PTO policy determination:               <ul style="list-style-type: none"> <li>Will employees be able to use or cash out available PTO (allowed, required, prohibited)?</li> <li>What does the employer policy say about paying out PTO?</li> <li>What do state and local laws say about paying out or enabling employees to use PTO while on furlough? Note that states and local authorities are implementing new laws and regulations with which employers must comply</li> </ul> </li> </ul>   |  |
|                 | <ul style="list-style-type: none"> <li>Identify rehire policies:               <ul style="list-style-type: none"> <li>Employee communication and engagement – what are the plans for engaging with empathy and preserving employer brand?</li> <li>If benefits are eliminated during furlough period, what is the process for re-election when they are back at work?</li> <li>How will programs that rely on time-of-service (e.g., promotions, benefits accruals) count the time while on furlough and if re-hired?</li> <li>How does the furlough impact things like pre-existing condition coverage, waiting periods, evidence of insurability, DCFS/HCFS elections, etc.?</li> </ul> </li> </ul> |  |
| Employee Impact | <ul style="list-style-type: none"> <li>Does the employer have a functional virtual work transition service to provide furloughed workers (traditional in-person coaching is not a feasible option during a pandemic)?</li> <li>If benefits are terminated, what benefit continuation requirements apply (e.g., COBRA, conversion)? Will the employer support people in getting securing health coverage through public exchange? Medicaid? Medicare?</li> </ul>   | <ul style="list-style-type: none"> <li>Communicate transition services that apply to furloughed individuals</li> </ul> |
| Compensation    | <ul style="list-style-type: none"> <li>Will there be any continuation of salary/hourly wage during the furlough?               <ul style="list-style-type: none"> <li>If yes, what % is affordable given the reasons for the action</li> </ul> </li> <li>If no, are any one-time payments (e.g., spot bonus, allowance) possible to help transition people to other unemployment benefits?</li> </ul>   | <ul style="list-style-type: none"> <li>Update payroll as applicable</li> </ul>   |

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| Health and Welfare Benefits | <ul style="list-style-type: none"> <li>• Determine if health and welfare benefits will be extended or terminated               <ul style="list-style-type: none"> <li>○ <b>Review contracts, plan documents, regulations to determine if employer has a choice, or if carrier/partner approval is required</b></li> <li>○ Confirm with carriers if there is any flexibility to accommodate the special circumstances associated with COVID-19.</li> <li>○ How does ACA stability period affect what a client can do, so as not to trigger penalties?</li> <li>○ Will carriers re-rate premiums/fees if enrollment drops by certain percentage (e.g. 10%)?</li> <li>○ Will there be fees charged by HRIS partner due to changes?</li> </ul> </li> </ul>  | <ul style="list-style-type: none"> <li>• Benefits continued or adjusted:               <ul style="list-style-type: none"> <li>○ Communicate benefit plan impacts to furloughed employees</li> <li>○ Amend plan documents as needed, or draft a Summary of Material Modifications (SMM), which can be found in Mercer's Open Enrollment Toolkit.</li> <li>○ Coordinate with carriers and vendors on necessary changes</li> <li>○ Communicate contribution guidelines and processes if different from normal</li> </ul> </li> <li>• Benefits terminated:               <ul style="list-style-type: none"> <li>○ Communicate benefit plan impacts to furloughed employees</li> <li>○ Amend plan documents as needed, or draft a Summary of Material Modifications</li> </ul> </li> </ul> |
|                             | <p><b>Employer opts to continue benefits coverage:</b></p> <ul style="list-style-type: none"> <li>• Document impact by line of coverage: medical, pharmacy, stop loss               <ul style="list-style-type: none"> <li>○ Confirm with carrier if there is any flexibility to accommodate the special circumstances associated with COVID-19.</li> </ul> </li> <li>• Policy Document Review:               <ul style="list-style-type: none"> <li>○ Maximum length of furlough to continue eligibility for coverage</li> <li>○ Obtained insurer/stop loss approval where necessary</li> <li>○ Do plan eligibility provisions allow or require allow coverage to continue during the leave? Or do eligibility provisions need to be amended?</li> <li>○ How much notice is required for benefit coverage changes and any particular required method of notice?</li> <li>○ Are Plan Doc/Section 125 changes required?</li> <li>○ Given the duration/timing of the furlough, are any SMMs, SMRs, or SPD revisions required?</li> </ul> </li> <li>• How will employer communicate continuation of benefits?</li> <li>• Employee/Employer Contributions:               <ul style="list-style-type: none"> <li>○ If the benefit continues and employee contributions are normally required, what happens?</li> <li>○ Will the employer cover the full employee contribution? If so, for how long? How will this happen mechanically (e.g., continuation of active coverage vs. paying COBRA premium)?</li> </ul> </li> </ul> |   |

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|  | <ul style="list-style-type: none"> <li>○ If employer will not pay the contributions, how will employee contributions be collected? <ul style="list-style-type: none"> <li>▪ Direct bill?</li> <li>▪ Defer and collect in arrears?</li> <li>▪ If the payee fails to pay premiums when is benefit coverage terminated? (In the event that an employer does not cover premiums and employee is required to pay, what is the payment grace period?)</li> <li>▪ How will direct billing be administered?</li> <li>▪ If employee is furloughed with reduced pay:</li> <li>▪ Will payroll deduction continue as normal? <ul style="list-style-type: none"> <li>○ What happens if there is not enough pay to collect deductions?</li> <li>○ Can employees opt-out <ul style="list-style-type: none"> <li>• Will pay-based benefits be based on full pay or reduced pay?</li> <li>• Will employee contributions for pay-based benefits be based on full pay or reduced pay? <ul style="list-style-type: none"> <li>○ Pay used for benefit determination and contributions should align.</li> </ul> </li> </ul> </li> </ul> </li> <li>▪ Can arrears be structured to only apply to a specific percentage of check? For instance, for a low paid employee, benefits cost could constitute their entire first check and most organizations will not want an employee to miss their first paycheck.</li> <li>▪ What if the employee leaves before arrears are paid off, is it taken from last paycheck?</li> </ul> </li> <li>○ What are the implications if an employer does not charge furloughed employees for benefits? Tax? ERISA?</li> <li>○ In the event of a salary reduction Health's Regulatory Resource Group (RRG) indicated only salary banded contributions would be allowed to make a mid-year election change but not when</li> </ul> | <p>(SMM), which can be found in Mercer's Open Enrollment Toolkit.</p> <ul style="list-style-type: none"> <li>○ Coordinate with carriers and vendors on necessary changes</li> <li>○ COBRA processes, where eligible</li> <li>○ Check with HRIS partner regarding any changes to administration.</li> </ul> |
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|  | <p>contributions are a fixed dollar amount for all employees.</p> <ul style="list-style-type: none"> <li>• Spending account considerations: <ul style="list-style-type: none"> <li>○ Will employer cease HSA/HRA/FSA contributions?</li> <li>○ Confirm whether changes may be made to dependent care spending accounts</li> </ul> </li> </ul>   |  |
|  | <ul style="list-style-type: none"> <li>• <b>Employer opts to terminate benefits:</b> <ul style="list-style-type: none"> <li>○ Confirm with carrier partners any applicable penalty fees that result from termination</li> <li>○ Plan eligibility/offer of coverage considerations <ul style="list-style-type: none"> <li>▪ Are Plan Doc/SPD/Section 125 Plan changes required?</li> <li>▪ ACA considerations (potential exposure to penalties)</li> <li>▪ If plan changes impact provisions of SPDs/SBCs, notice is required.<br/> <a href="https://www.dol.gov/sites/dolgov/files/EB/SA/about-ebsa/our-activities/resource-center/publications/reporting-and-disclosure-guide-for-employee-benefit-plans.pdf">https://www.dol.gov/sites/dolgov/files/EB/SA/about-ebsa/our-activities/resource-center/publications/reporting-and-disclosure-guide-for-employee-benefit-plans.pdf</a> </li> </ul> </li> <li>○ COBRA compliance (health coverage) <ul style="list-style-type: none"> <li>▪ Is there a legal requirement to offer continuation of coverage (e.g. COBRA, conversion, portability)? If so, what is the employer's responsibility to communicate information on impacted employees to administrators?</li> <li>▪ If there is no legal requirement to continue coverage, termination procedures would apply. How will that be communicated to employees?</li> <li>▪ Will employer pay COBRA subsidies?</li> </ul> </li> <li>○ Conversion/portability requirements (non-health coverages)</li> <li>○ Regardless of benefit determination, If still employed, employees retain eligibility for FMLA /sick leave. However, FMLA rights may change if an employee is furloughed and the ability to take sick leave may also change.</li> </ul> </li> <li>• Rehire Planning:</li> </ul> |  |

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|  | <ul style="list-style-type: none"> <li>○ If benefits are terminated, how will they be reinstated upon return (step back into elections, new election)?</li> <li>○ For benefits that do terminate, if the separation from employment was temporary, what happens when the employee returns?</li> <li>○ Does employee need to enroll in benefits? If they enroll, are they auto-enrolled in what they had before?</li> <li>○ Are returning employees treated the same as a new hire? If so, does that mean benefit accumulators reset? Will evidence of insurability be required? Do employees need to meet waiting periods for eligibility?</li> <li>○ Evaluate current waiting periods and determine if they should/can be changed to allow someone to have eligibility upon rehire, i.e., change waiting period from 30 day to day 1.</li> </ul>   |  |
|  | <ul style="list-style-type: none"> <li>● Non-health benefits - Note that non-health benefits, especially employee paid benefits, are more likely to be insured. That means employers may have less flexibility when requiring changes. <ul style="list-style-type: none"> <li>○ Policy document review: (Life, Disability, Stop loss, voluntary coverages) <ul style="list-style-type: none"> <li>▪ Do plan eligibility provisions allow coverage to be continued while on leave? Or are changes required?</li> <li>▪ Inventory “actively at work” provisions in all insured contracts</li> <li>▪ Maximum length of furlough to continue eligibility for coverage</li> <li>▪ Obtained insurer approval where necessary</li> <li>▪ How much notice is required for any benefit coverage changes and any particular required method of notice?</li> <li>▪ Can employees increase, decrease, or drop coverage while on leave? How does dropping coverage impact election if/when leave ends?</li> <li>▪ What non-health benefit continuation/portability clauses exist within current policies?</li> </ul> </li> </ul> </li> </ul> |  |

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|  | <ul style="list-style-type: none"> <li>○ Is the benefit the employee received while on leave the same as coverage while active? Note that some life policies limit the amount of coverage that can be converted or ported or have age limits.</li> <li>● Identify process for employee contribution/premium collection to extend coverage during furlough</li> <li>● When is benefit coverage terminated if the payee fails to pay premiums? (In the event that an employer does not cover premiums and employee is required to pay, what is the payment grace period?)</li> <li>● Life and long term disability (LTD) coverage periods: Typically, employees have coverage to the end of the month from which they are no longer considered actively employed; we also see options for a specified period (i.e. 30 days). However, upon request, based on the COVID-19 situation, we are seeing carriers extend up to 90 days but only if required premiums are paid.</li> <li>● Confirm whether Voluntary Benefits (VB) will continue <ul style="list-style-type: none"> <li>○ Note if VB benefits will terminate after a specific number of missed deductions</li> <li>○ Note if VB benefits can be suspended and resumed after furlough</li> <li>○ Can employee easily dis-enroll/suspend voluntary benefits if pay is reduced?</li> </ul> </li> <li>● Rehire planning: <ul style="list-style-type: none"> <li>○ If benefits are terminated, how will they be reinstated upon return?</li> <li>○ Will individuals be able to choose for all previously elected benefits to be reinstated?</li> <li>○ For benefits that do terminate, if the separation from employment was temporary, what happens when the employee returns?</li> <li>○ Does employee need to enroll in benefits? If they enroll, are they auto-enrolled in what they had before?</li> <li>○ Are returning employees treated the same as a new hire? If so, does that mean benefit accumulators reset? Will evidence of insurability be required? Do employees need to meet waiting periods for eligibility?</li> </ul> </li> </ul> |  |
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| Retirement | <ul style="list-style-type: none"> <li>Consider impact of furlough (an approved leave or suspension without pay) on existing plan benefit formula. Reduction of pay and suspension of service may impact both employer and employee-funded benefits.</li> <li><b>How will employees on paid leave be handled during a furlough?</b> <ul style="list-style-type: none"> <li>What are the various types of paid leaves employees could be on at the time of the furlough (e.g., short-term disability (STD), salary continuation, paid parental leave, paid caregiver leave, military leave, etc.)?</li> <li>For each type of leave, is the benefit insured or self-insured? Which are ERISA benefits and which are pay practices? For most employers, all paid leaves will be non-ERISA pay practices with the exception of STD which may be insured and/or subject to ERISA. <ul style="list-style-type: none"> <li>If the benefit is insured, in almost all cases, benefits will remain payable until benefits end (e.g., recovery, death, end of benefit period).</li> <li>If the benefit is self-insured, the policy will need to be reviewed to determine if benefits remain payable after the furlough. <ul style="list-style-type: none"> <li>If employees are furloughed with pay are benefits reduced for employees on paid leave that started before the date of the pay reduction/started after the date of the pay reduction?</li> <li>If employees are furloughed without pay: <ul style="list-style-type: none"> <li>are benefits reduced to zero for employees on paid leave that started before the date of the pay reduction?</li> <li>are benefits reduced for employees on paid leave that started after the date of the pay reduction?</li> </ul> </li> <li>Be mindful of plan documents, employee handbook and contract</li> </ul> </li> </ul> </li> </ul> </li></ul> | <ul style="list-style-type: none"> <li>Communicate benefit plan impacts to furloughed employees</li> <li>Amend plan documents as needed</li> <li>Produce SMMs as needed, and revise SPDs as needed</li> <li>Coordinate with vendors on necessary changes</li> <li>Communicate contribution guidelines and processes if different from normal</li> <li>Review all paid and unpaid leave policies</li> <li>Coordinate with payroll on how employees and/or benefits will be handled during furlough</li> <li>Clearly communicate how pay and benefits will be handled during furlough to impacted employees.</li> </ul> |
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|  | <p>terms. Those should define key terms, set out rules for amendment, and employee notification (taking into account legal requirements, i.e. ERISA).</p> <ul style="list-style-type: none"> <li>▪ Employees on paid leave may be entitled to federally or state mandated benefits that run concurrently (e.g., FMLA, state disability or paid family leave) with their paid leave. Decisions the employer makes regarding their own leave policies may differ from legal requirements under those concurrent policies.</li> <li>○ Review and confirm compliance with federal, state and local emergency leave requirements which change frequently</li> <li>○ Note that if a furlough occurs after April 1, 2020, employees are not entitled to take paid sick leave or expanded family and medical leave under the new provisions within the Families First Coronavirus Response Act (FFCRA).</li> </ul>  |  |
|  | <ul style="list-style-type: none"> <li>• <b>How will employees on unpaid leave during a furlough be handled?</b> <ul style="list-style-type: none"> <li>○ What are the various types of unpaid leaves employees could be on at the time of the furlough (e.g., federally or state mandated family medical leave, company-sponsored family medical leave, unpaid medical leave, etc.)? <ul style="list-style-type: none"> <li>▪ If the leave started before the furlough: <ul style="list-style-type: none"> <li>• Health benefits and job protection may be mandated if the leave is qualified under FMLA or similar state laws,</li> <li>• If the benefit is company-sponsored and not mandated, the employer will need to follow the policy documents to determine what requirements must be followed during the furlough.</li> </ul> </li> <li>▪ If the leave starts after the furlough: <ul style="list-style-type: none"> <li>• FMLA and similar state laws do not provide much guidance on how to handle a leave that starts</li> </ul> </li> </ul> </li> </ul> </li> </ul> |  |

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|  | <p>for an employee who has been furloughed.</p> <ul style="list-style-type: none"> <li>○ If the employee is furloughed with reduced pay or hours, regular FMLA rules will apply.</li> <li>○ If the employee is furloughed without pay, it is likely that regular FMLA rules will apply.</li> <li>● For company sponsored leaves, review policy documents to determine eligibility and applicability.</li> <li>○ Review and confirm compliance with federal, state and local emergency leave requirements which are constantly changing.</li> </ul>  |  |
|  | <ul style="list-style-type: none"> <li>● Plan Document Review: <ul style="list-style-type: none"> <li>○ Discuss best practices with record-keeper and consider whether existing status codes are sufficient to account for furlough vs terminated or other LOA status</li> <li>○ CARES Act relief allowing postponement of plan loan repayment up to 1 year (for qualified COVID-affected individuals) may help furloughed employees avoid plan loan defaults during period of non-payment</li> <li>○ To the extent that hours or periods of employment dictate benefits or rights in the retirement plan, the plan document should be examined to confirm the impact on the furlough. The plan might be amended to provide for special rights for furloughed employees, such as in-service distributions, or accelerated or increased accruals. Design and compliance considerations must be taken into account. For example, Code Sec. 415(c) prohibits annual additions to DC plans in excess of 100% of an employee's annual compensation.</li> </ul> </li> </ul> |  |
|  | <ul style="list-style-type: none"> <li>● Examine expansion of participant loans during furlough: expand sources, increase number and amount of loans; revisit hardship provisions.</li> <li>● Summary of Material Modifications (SMM) required and likely plan loan policy/program as well for loan changes</li> </ul>  |  |

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| Communications | <ul style="list-style-type: none"> <li>• Establish comprehensive communication plan for multiple personas (e.g., furloughed workers, remaining workers, management, customers, etc.).</li> <li>• Prepare leaders and managers to communicate effectively and consistently</li> <li>• Does the employer have correct contact information to get in touch with employees if they are not working? Create plan to obtain information if not.</li> </ul> | <ul style="list-style-type: none"> <li>• Provide tools for managers and leaders to support communication of the action consistently and with empathy (talking points, FAQs, and communication tips).</li> <li>• Communication tips: <ul style="list-style-type: none"> <li>○ Don't overpromise (e.g., that this will prevent worse actions later, or that all are guaranteed to be rehired/reactivated)</li> <li>○ Explain the action with empathy, providing the business case and briefly noting that this is the best of a set of bad options</li> <li>○ Note that those on furlough are still part of the team – that the furlough is a temporary action, and goal is to return to normal after this period ends</li> </ul> </li> <li>• Provide contacts for support (on benefits</li> </ul> |
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|  |  | <p>and anything else available) during the furlough</p> <ul style="list-style-type: none"> <li>• Provide a channel (mobile enabled website, ideally) for updated information during the furlough</li> <li>• Benefits: <ul style="list-style-type: none"> <li>○ Communicate specifics about which coverages may be continued and associated billing process with impacted employees</li> </ul> </li> <li>• Promote the services/benefits that will continue to be available, especially for healthcare support, EAP support for mental health and dependent care resources (if available)</li> </ul> |
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| HR Function & Administration | <ul style="list-style-type: none"> <li>• Develop work plan to operationalize the action <ul style="list-style-type: none"> <li>○ How will the employer operationalize the layoff utilizing their HR/payroll technologies and HR staff?</li> </ul> </li> <li>• Is the employer's HR/payroll technologies equipped to respond to furloughs/layoffs? <ul style="list-style-type: none"> <li>○ If HR/payroll technologies are not set up, it is a matter of figuring out the right path forward for how the data moves through the system</li> </ul> </li> <li>• When payroll has a new code for furloughs, what is the benefits administration system/module doing with that code?</li> <li>• Identify which authorities need to be notified of the action (authorities may vary by action)</li> <li>• Identify legal notification requirements (e.g., WARN Act, Cal-WARN, etc.), that have to be taken into consideration</li> <li>• Create comprehensive career transition support program (e.g., CareerArc) - scope will vary by action</li> <li>• Ensure payroll is set up to account for additional loans if added and to delay loan repayments if via payroll deductions</li> </ul> | <ul style="list-style-type: none"> <li>• Initiate/setup HR/payroll technology processes that support all of the decisions made during planning</li> <li>• Organize team to execute the furlough (e.g., HR, Payroll, IT, management, etc.)</li> <li>• Notify appropriate authorities of the furlough</li> <li>• Launch career transition support program</li> </ul> |
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# Other Mercer Internal Resources

- Health
  - [US CARES Act Summary - Oliver Wyman](#)
  - [GRIST - CARES Act](#)
- Wealth:
  - [CARES Act- Executive Law & Regulatory Work Summary](#)
  - [COVID19 Wealth Key Design Considerations - DC plans](#)

## 5

# Health and Welfare Benefit Considerations

The following is a summary of considerations as it relates to:

1. Terminating H&W benefits coverage during furlough and/or lay-off
2. Continuing H&W benefits coverage while employees are furloughed

As always, ABC Company should work with its legal counsel experienced in employment and benefits law (and labor law, if applicable) before pursuing a course of action related to a furloughs and layoffs.

## 1. Terminating H&W benefits coverage during furlough or lay-off

### Compliance Considerations:

If ABC Company decides to terminate furloughed employees' health coverage (or raise their contributions), consider the following:

- This is a COBRA qualifying event and the covered employee and covered spouse and children (and, domestic partner and their children, if the plan terms allow for it), if any, must be offered COBRA continuation coverage
- ABC Company should also consider whether this action increases its risk of Employer Shared Responsibility penalties in the future:
  - If ABC Company uses the monthly method to identify full-time employees, there should not be any increased ESR penalty risk because employees on furlough will not meet the 130-hour threshold for full-time status.
  - If ABC Company uses the lookback method to identify full-time employees, some employees on furlough may remain the employer's full-time employees for the entire stability period. If these employees remain employed, there is increased penalty risk.
- ABC Company should consider ERISA rules in documenting and communicating this change to the plan.

If ABC Company implements a “layoff” of its employees: In this case, if the termination of employment causes a loss of health coverage, this is a COBRA qualifying event and the covered employee and covered spouse and children (and, domestic partner and their children, if the plan terms allow for it), if any, must be offered COBRA continuation coverage.

#### **Cost of Coverage Considerations:**

ABC Company may choose to subsidize all or a portion of the COBRA premium for impacted employees. Self-insured plan non-discrimination rules would apply.

## **2. Continuing H&W benefits coverage while employees are furloughed**

#### **Compliance Considerations:**

- ABC Company’s ERISA counsel will need to confirm these employees remain “common law” employees during the temporary leave period and whether furloughed employees are eligible for health coverage. ABC Company may rely on ERISA Wrap Plan Document and/or SPDs to determine eligibility, or take a more expansive view that coverage continues for furloughed employees.
- Qualifying Life Event:
  - Typically, a furlough does not qualify as a qualifying life event (QLE) but given the circumstances with the Coronavirus, it may be argued that these extenuating conditions would allow a furlough to be considered a QLE allowing employees to opt to change to lower cost medical plan options or drop coverage. Additionally, once the furlough ends and employees are able to go back to work, that could count as a QLE as well, allowing employees the opportunity to reenroll or change medical plans (if they continued their enrollment).
  - We strongly recommend working with your legal counsel if you are considering treating the furlough as a QLE
  - If ABC Company determines to treat the furlough as a QLE, to assist, ABC Company can:
    - Consider calling the re-enrollment a “new enrollment opportunity”
    - ABC Company will need to determine requirements for employees to reenroll (e.g., must elect/change coverage within 30 days of rehire)

### Cost of Coverage Considerations:

- If ABC Company continues coverage during a furlough, ABC Company will need to determine if and how much furloughed employees will contribute towards the cost of coverage.
- We recommend checking existing unpaid leave policies related to payment of required contributions and, arguably, apply the same rules for payment. The policy may require the employee to pay the requisite contributions in regular installments or “catch-up” with missed contributions upon returning from leave.
- If ABC Company decides to raise employee contributions (or terminate coverage), this becomes a COBRA qualifying event and the considerations listed above under item #1 will apply.

### Administrative Considerations Inventory:

|   |  |
|---|--|
| Evaluate which benefits to continue during furlough |  |
| Need agreement from carriers to administer          |  |
| Need to amend plan documents                        |  |
| How will employees pay premiums?                    |  |
| HSA Funding   |  |
| Plan Accumulators                                   |  |
| Impact ACA Reporting                                |  |
| Consistency with Unpaid Leave Policies              |  |

### Vendor Response Inventory:

The following information was provided by each vendor partner regarding their position on continuing coverage for furloughed employees:

| Coverage/Vendor       | Vendor Response |
|-----------------------|-----------------|
| Medical               |                 |
| Stop Loss             |                 |
| Pharmacy              |                 |
| Dental                |                 |
| Vision                |                 |
| Life Insurance        |                 |
| Short Term Disability |                 |
| Long Term Disability  |                 |
| Telemedicine          |                 |

