

Actions & FAQs for employers during the COVID-19 pandemic

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Helpful Terms

What is a National Emergency?

A Federal National Emergency was declared by the Trump Administration on March 1st in response to the COVID-19 pandemic. In general, the declaration of the National Emergency enables federal and state governments to offer benefits and relief to people directly suffering from the effects of COVID-19, in addition to relief measures for companies and employees who are suffering financially from the crisis. Employee benefits and health coverage are a few of many areas that have received some form of financial or compliance relief under the National Emergency.

What is the “Outbreak Period”?

The Outbreak Period is a term created in guidance by the Department of Labor (DOL) in late April, 2020, and is defined as the time frame between March 1, 2020, and 60 days after the National Emergency is declared over. As an example, if the National Emergency is declared over on May 31st, 2020, then the Outbreak Period would be the period from March 1st, 2020 through July 30th, 2020.

Why is the Outbreak Period important to COBRA and other benefits with claims or filing deadlines?

The April guidance from DOL suspended various deadlines during the Outbreak Period for COBRA participants and for certain employee benefit plans (primarily FSAs and HRAs) that typically have claim deadlines and run-out periods. During the Outbreak Period, the “clock is off” for the typical deadlines in these benefits, and will not be enforced until the Outbreak Period is over.

General guidelines for employees on leave/furlough/change in benefits eligibility status

My company is doing everything it can to keep our employees on payroll and eligible for benefits during this time. We are reviewing all employment status contingencies at this time, including paid leave under FMLA, reductions in hours and/or rate of pay, short-term unpaid leave, and/or permanent layoffs. How do these situations affect eligibility and continuation of health and FSA benefits?

See the table on page 2. The table answers these questions for a listing of various employment status change events, along with relevant considerations and recommendations related to health plan and FSA coverage.

What changes are introduced by the Families First Coronavirus Response Act (FFRCA) relative to emergency paid sick leave (EPSL) and expanded family and medical leave (expanded FMLA)?

The FFRCA includes reimbursement in the form of tax credits to companies with fewer than 500 employees to pay for expanded sick and family leave, effective April 1, 2020 through December 31, 2020. A brief summary of the FFRCA provisions for employees of companies under the Act are as follows:

- Up to 80 hours of paid sick leave at the employee's regular pay rate for those employees unable to work because they are directly affected by or under quarantine because of the COVID-19 virus.
- Up to 80 hours of paid sick leave at 2/3 of the employee's regular pay rate for those employees unable to work because they are caring for a family member or dependent impacted by COVID-19, or because they are caring for a child under age 18 whose school or day care facility is closed.
- Up to 10 additional weeks of paid expanded family and medical leave (under FMLA) at 2/3 of the of employee's regular pay rate for those employees unable to work because they are caring for a child under age 18 whose school or day care facility is closed.

For a further details, additional FAQs, and template communications related to the FFRCA, please see the Department of Labor site at <https://www.dol.gov/agencies/whd/pandemic>. Information, FAQs, and forms for employers seeking the available tax credits for reimbursement of costs associated with the EPLS and expanded FMLA provisions should visit the IRS site at <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>.

Change in employment status by employee, spouse, or dependent that affects eligibility	Major Medical	Health FSA	Daycare FSA
Commencement of Employment by Employee (new hires)	Provided that eligibility was gained for this coverage, employee may add coverage for employee, spouse, or dependents and coverage option (e.g., HMO to PPO) change may be made.	Same as previous column.	Same as previous column.
Commencement of Employment by Spouse or dependent	Employee may revoke or decrease election under employee's, spouse's, or dependent's coverage if employee, spouse, or dependent is added to spouse's or dependent's plan; coverage option (e.g., HMO to PPO) change may be made.	Employee may decrease or cease election if gains eligibility for health coverage under spouse's or dependent's plan.	Employee may make or increase election to reflect new eligibility (e.g., if spouse previously did not work) and may revoke election for dependent who is added to spouse's plan.
Termination of Employment - Employee	Employee may revoke or decrease election for employee, spouse, or dependent who loses eligibility under the plan. Coverage option change may be made.	Employee may revoke election to reflect loss of eligibility (note that under most health FSAs, employee loses coverage automatically).	Employee may revoke or decrease election to reflect loss of eligibility.
Termination of Employment - Spouse or Dependent	Employee may enroll or increase election for employee, spouse, or dependents who lose eligibility under spouse's or dependent's employer's plan. Also, coverage option (e.g., HMO to PPO) change may be made. In addition, other previously eligible dependents may also be enrolled under tag-along rule.	Employee may enroll or increase election to reflect loss of eligibility for health coverage.	Employee may enroll or increase election if spouse or dependent loses eligibility for DCAP. Employee may decrease or cease election to reflect loss of eligibility for coverage (e.g., if spouse stops working).
Termination and rehire within 30 days	Prior elections at termination are reinstated unless another event has occurred that allows a change.	Same as previous column.	Same as previous column.
Termination and rehire after 30 days	The plan, by design, can either allow the employee to make a new election, require reinstatement of the old election, or keep the participant out of the plan for the remainder of the year.	Same as previous column.	Same as previous column.

For employees on leave under the Family Medical Leave Act (FMLA) provisions, are there other considerations that I should communicate?

Employees impacted by COVID-19 themselves, or those who need to be home to take care of an immediate family member may wish to go on a leave of absence (LOA). Under FMLA, employees can choose to revoke or continue group health plan and health FSA coverage during an unpaid leave. Employers can also require that coverage continues during an unpaid leave but allow the employee to temporarily discontinue their contribution to premium costs. If the employer continues coverage during an unpaid leave, the employer may recover the employee's share of premiums after they return to work.

If possible, employers should determine whether the employee will revoke or continue group health and FSA coverage during leave. If they choose to continue coverage, expenses incurred during leave are eligible. The IRS regulations provide three options for funding the benefit in the event an employee chooses to continue coverage:

- accelerate contributions out of the last paycheck before leave begins
- pay-as-they-go using after-tax dollars
- catch-up payments upon return

If the employee revokes FSA coverage, expenses incurred during the LOA are not eligible for reimbursement. Upon return from leave, the employee may resume their original per paycheck deduction (thereby decreasing their annual election by the amount of the missed contributions).

What about employees going on unpaid leave outside of FMLA provisions?

In general, no election changes can be permitted for an unpaid leave unless the employee who goes on leave loses eligibility for coverage. Employers that would like employees to be able to drop coverage during unpaid leave must amend their documents to state that those going on unpaid leave are not eligible for benefits. Some employers will borrow FMLA rules and apply those to unpaid leave. Employers will need to consult their plan documents or related policies regarding unpaid leave and amend those as they see necessary.

For employees returning to work from an FMLA leave, how do I calculate their new deduction amounts (“catch-up contributions”) to make up their missed contributions while they were on leave?

To calculate an employee’s catch-up contributions to make up the missed contributions while on leave, the formula is:

$$\frac{\text{(Annual Election – Total Contributions prior to the Leave)}}{\text{(Number of Remaining Pay Periods in the Year)}}$$

As an example, an employee with a \$2000 election in their health care FSA goes on leave on April 1, 2020, and has contributed \$500 to date. They are paid semi-monthly, and they return to work on July 1, 2020. The calculation for their catch-up contribution from their remaining paychecks would be:

$$(2000 - 500) / (12 \text{ remaining pay periods}) = \$125$$

What about employees who are being furloughed?

Furlough, unless otherwise described in your plan documents, is essentially the same as a layoff but with the expectation that the employees have an expectation that they could return. Furlough is generally not a change in status unless the furlough triggers eligibility as stated in your plan document. In most cases, furloughed employees are eligible for COBRA, unless your plan documents explicitly states that furloughs will not trigger a change in benefits eligibility.

If you want to provide free or subsidized coverage to furloughed employees and your plan is fully insured or you have purchased stop-loss insurance, we recommend employers consult with the carrier before amending the plan to provide such coverage.

What about employees who will be working reduced hours?

A reduction in hours may allow coverage to be revoked prospectively under group health plans, but not health care FSAs unless a reduction in hours triggers a change in eligibility. Employees working reduced hours can change or stop their health care FSA elections if the reduction results in a change in eligibility as defined in your health plan or flexible benefits plan documents. Employees whose hours of service are reduced below 30 hours per week as a result of a change in employment status can drop employer-sponsored health coverage (even if eligibility for the coverage is not affected) if the participant intends to enroll in another plan offering minimum essential coverage and other specific conditions are met. These rules apply to variable hour employees and is beyond the scope of this FAQ. If employers have variable hour employees they will need to review the rules regarding reduction of hours and permissible changes.

What about employees who will be working with a reduction in their pay?

Reduction in pay are typically not considered qualified status change events unless specifically defined in your plan document. If pay reduction causes the employee to become newly eligible for a subsidy under the Affordable Care Act, the employee may be able to enroll for health coverage through an ACA exchange. We are seeing employers weigh the benefits of reducing the cash flow burden on employees who are experiencing hardships against any compliance risks during this time of unprecedented emergency. Employers should consult with their legal counsel and/or employment advisors for guidance in these circumstances.

Can I take FSA deductions for employees using vacation/sick time while on leave?

Yes, as most employees using paid vacation and sick time are still fully employed and compensated under your PTO/sick policies and are not triggering a change in eligibility.

Our medical plan carrier is allowing a special midyear enrollment period for non-new hires to join the plan. Do cafeteria plan rules allow this?

Change in status rules do allow midyear enrollment/changes to be made if there are significant changes to a plans cost or coverage. Without a change to cost or coverage that is deemed "significant", current regulations do not permit someone to enter the plan midyear and have those premiums deducted pre-tax through payroll. Midyear enrollment may be permitted, but without a qualifying event to allow the change, premium deductions would need to be made on post-tax basis.

Health Care Flexible Spending Accounts

I have heard about the new eligibility provisions for over-the-counter (OTC) products as a function of the CARES Act passed on March 27, 2020. What's new, and do I need to do anything to my plan document to adopt them?

The CARES Act expands and broadens the use of FSAs/HSAs/HRAs for certain types of healthcare products and services, including:

- The inclusion of additional items as qualified medical expenses, specifically menstrual care products. This change affects any purchases made after December 31, 2019 and is a permanent change to the list of eligible expense items that can be purchased with FSA/HSA/HRA funds.
- Relaxation of the rules related to purchases of over-the-counter (OTC) medications, so that FSA/HSA/HRA funds can be used to purchase cold medications, antihistamines, antacids, anti-inflammatories, and other health-related items without requiring a prescription. The CARES act essentially reverses the impact of the 2010 Affordable Care Act provisions which restricted the use of FSAs and HSAs to the purchase of prescription medications.

The new OTC provisions of the CARES Act are effective as of January 1, 2020 and require no action on the part of employers, unless your FSA/HSA/HRA plan documents include specific language that excludes OTC items or requires a prescription for OTC purchases (this is a rare exception, as most plan documents allow expenses under Section 213(d) of the tax code which has been broadened and amended by the CARES Act).

Our company's FSA claims run-out period for our 2019 FSA plan ended on 3/31/2020. I would like to extend it to give my employees more time to file claims...can I do this and how?

On April 29, 2020, the Department of Labor released additional guidance related to the COVID-19 pandemic that extended the deadlines associated with many benefit plans subject to ERISA and HIPAA guidelines. Under the guidance, FSA claim filing deadlines were suspended as of the declaration of the National Emergency on March 1, 2020. FSA participants can continue to file claims for eligible medical expenses incurred in 2019 until 60 days after National Emergency is declared over.

In addition, some employers took action in March, 2020 to extend their FSA plan run-out period beyond March 31, 2020. The new DOL guidelines also apply to these plan amendments and allow FSA participants to file 2019 claims until 60 days after the declared end of the National Emergency. Please reach out to us at clientservices@asibenefits.com if you need assistance in making plan amendments.

Our company's FSA grace period just ended on 3/15/2020. Can I extend this so that employees can incur new medical expenses and file under our 2019 plan year?

No, currently under published IRS guidelines, the FSA grace period is a defined and fixed period of 2 ½ months following the close of the plan year. The IRS has not provided any additional guidance or changes to this policy since the onset of the COVID-19 crisis, but ASi is monitoring all regulatory updates and will provide updates if and as they are made available.

Can we change our 2020 plan so that employees can carry over more than \$500 to the upcoming plan year?

No, currently under published IRS guidelines, the FSA carryover provision allows a maximum of \$500 to be rolled over from the current plan year to the following plan year. The IRS has not provided any additional guidance or changes to this policy since the onset of the COVID-19 crisis, but ASi is monitoring all regulatory updates and will provide updates if and as they are made available.

We have employees who recently made elections in their FSAs for planned dental or surgical procedures, and the provider facilities where those procedures were to be performed are now closed or have canceled all non-essential care during the crisis. Can these employees change or cancel their election, or can we extend our plan year to accommodate these employees?

There are no current provisions in the FSA regulations that allow changes/reductions in annual elections due to the lack or unavailability of specific providers. Employers who have not previously adopted either the FSA grace period or carryover provision in their plans may want to consider this as a means of helping employees in these situations. Employees may also want to consider using their funds for other needed medical services during this time.

Can employees on unpaid leave continue to fund their HCFSAs through contributions from their own bank account?

Yes. In this pay-as-you-go option, employees should be made aware that they will not get the pre-tax withholding benefits associated with payroll contributions while they are in a leave status.

Our company does not have a grace period. Can a grace period be added now?

A grace period for the current 2020 plan year can be added with a plan amendment and proper communication to participants; contact clientservices@asibenefits.com if you need assistance with this change.

If our company already has a roll-over option, can we add the grace period on top of that now?

The FSA regulations currently allow employers to include either a carry-over option or a grace period as a feature of their plan, but not both. Employers can choose either and add it if necessary to their 2020 plan year with a plan amendment and proper communication to participants.

The recent DOL guidelines suspended the claims run-out periods for 2019 FSAs. What will happen to forfeiture in these plans?

Forfeiture calculations for 2019 FSA plans will obviously be delayed because of the extended filing periods for claims. The actual date by which forfeitures will be calculated is uncertain until the federal government declares an end to the National Emergency and the exact length of the Outbreak Period will be known. ASi will promptly calculate FSA plan forfeiture amounts following the end of the Outbreak Period and will be communicating to employers accordingly.

Do I need to amend my FSA plan documents because of the suspension of the claims filing period?

Because the DOL guidance does not represent a meaningful change in benefits or costs in the plans, ASi's general recommendation is that no plan document changes are required.

Dependent Care Flexible Spending Accounts

We have employees whose children will not be attending school for the remainder of the school year and now require day care. Many employees will be asking family members to watch their child while at work. Can they still participate in the DCFSA, and can they use their account to pay their family member?

Yes, employees in this situation can still participate in your DCFSA plan and pay their family member to provide care for their children. The family member providing care cannot be the employee's spouse and cannot be a dependent under the age of 19.

Are school and day care facility closures qualifying events that would allow participants to change their Day Care election, and how can I help them do this?

Yes, a change in day care provider is a qualifying status change event. Employers should make the appropriate deduction changes through their payroll provider and update the election with ASi through their normal data transfer processes.

My daycare is closed and now I must enroll my child into a temporary pandemic daycare. Is this daycare center eligible and if so, can I change my dependent care election if need be?

Yes, daycare facilities established specifically in response to the COVID-19 crisis are eligible providers, and employees can make or change their DCFSA elections to pay for these services as described above.

My spouse is no longer working but he/she expects to go back to work soon. We don't want to lose our spot at the daycare and are still paying a fee to reserve our spot, can I still participate in the dependent care FSA?

Indirect childcare expenses (deposits, registration fees, etc.) are eligible for reimbursement under a DCFSA plan as a function of providing actual care to your children. In the context of the question, ASi interprets fees to hold spots in day care facilities where your child attends to be eligible expenses under this definition. Claims for indirect childcare expenses become eligible for reimbursement once the spouse goes back to work and childcare with the provider has resumed.

My spouse is now working from home and our kids are no longer in daycare. We are contributing an equal amount all year long into our dependent care FSA. We have already incurred \$5,000 in dependent care expenses with dates of service incurred before the kids stopped going to daycare. Can I still participate in my employer's dependent care FSA and just send in claims from while they were still going to daycare?

Yes, you can claim and be reimbursed for eligible daycare expenses that have been incurred earlier in the plan year. You do not need to have children actively receiving childcare in order to submit claims for prior expenses.

Currently there is no rollover from one year to the next for DC FSA. Is there talk of having this changed?

There is no current guidance or change relative to rollover for DCFSAs. Navia is monitoring all regulatory changes and will communicate as new information is made available

Will an E-mail from a participant requesting a change in their DCFSA election suffice for documentation purposes?

Yes. The member must email their HR/employer. The employer will then notify ASi.

Will DCFSA participants who change their election be able to reinstate their original election later this year if school and/or day care facilities resume normal services?

Yes, as long as the reinstatement/change is consistent with their future use of eligible daycare services.

Health Savings Accounts

Our company has many employees who have active payroll contributions to their HSAs. Can they change their contributions if they are facing reduced hours or temporary leave?

Yes, employees can change future payroll contributions to Health Savings Accounts (HSAs) at any time. Note that employees must be eligible and enrolled in qualifying high-deductible health plan (HDHP) in order to contribute to their HSAs.

OK, I understand that employees can change their HSA contributions at any time. Can we, the employer, change our EMPLOYER contributions/subsidies to HSA participants?

Yes, with a plan change to your HSA plan document and subsequent communication to your employees. Please contact clientservices@asibenefits.com if you would like to amend your plan and then eligibility@asibenefits.com to update your employer contributions/subsidies amounts to participant accounts ASi administers.

Can employees on unpaid leave continue to fund their HSAs through contributions from their own bank account?

Yes, provided that they remain enrolled in a qualified HDHP. In this circumstance, employees should be made aware that they will not get the pre-tax withholding benefits associated with payroll contributions while they are in a leave status.

What impact does the recently-announced deferral of the tax filing deadline to July 15th have on HSAs?

The Treasury Department and the IRS recently announced a deferral of the 2019 tax filing deadline to July 15th. With this announcement, the deadline to make contributions to your 2019 HSA have also been extended to July 15th. This also implies that Form 5498s for the 2019 tax year will not be made available until sometime after the filing deadline, likely in mid-to late August. For a full list of questions and answers related to the IRS filing deadline extension, please click here: https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers?_cldee=cHNocmlkZXJAdGFiZW4uY29t&recipientid=contact-1c2b4b51e8d4e51180eb3863bb368b18f443a4ea25cc4149a3419e6114bdbb64&esid=e97b04b5-126e-ea11-a811-000d3a4df348

Can an employer decrease or cease HSA contributions into Employee accounts?

Yes, an employer can choose to change employer contributions to the HSA with a plan Change of Status Form and proper communication to participants. Please contact eligibility@asibenefits.com to make any contribution changes.

Can employees use money from their HSAs to pay or be reimbursed for their COBRA health insurance premiums?

Yes.

Commuter Benefits

Can my employees who participate in our Commuter Benefits program change or cancel their existing transit and parking elections? Can they reinstate them when they come back to work?

Yes, Commuter Benefits as defined under Section 132 of the IRS code are changeable on a month-to-month basis and can be paused or reinstated based on each employee's needs. Employees must make changes to their commuter order for the upcoming/future month by the 20th of the current month.

Can we cancel or temporarily suspend commuter orders on behalf of a group of employees who will be going on leave status or will no longer be working for us?

Yes, we recommend that you communicate with the employees prior to making the change. Please contact us as eligibility@asibenefits.com if you need to make election changes.

Health Reimbursement Arrangements

How does a change in an employee's health care eligibility status affect their HRA's?

Most HRA plans are defined as a component of the employee's overall health care coverage, and eligibility for HRA reimbursement follows and aligns with the employee's eligibility for health insurance. HRAs that are specifically designed to reimburse vision/dental and other non-medical services can have separate eligibility rules and are not linked to health insurance eligibility.

The recent DOL guidelines suspended the claims run-out periods for 2019 HRAs. What will happen to forfeiture in these plans?

Forfeiture calculations for 2019 HRA plans will obviously be delayed because of the extended filing periods for claims. The actual date by which forfeitures will be calculated is uncertain until the federal government declares an end to the National Emergency and the exact length of the Outbreak Period will be known.

Do I need to amend my HRA plan documents because of the suspension of the claims filing period?

Because the DOL guidance does not represent a meaningful change in benefits or costs in the plans, ASI's general recommendation is that no plan document changes are required.

COBRA

Are there any announced relief plans (tax credits, subsidies, deferrals, etc.) to help people pay COBRA premiums?

On April 29, 2020, the Department of Labor released additional guidance related to the COVID-19 pandemic that extended the deadlines associated with many benefit plans subject to ERISA and HIPAA guidelines. Under the guidance, COBRA election and payment deadlines were suspended upon the declaration of the National Emergency on March 1, 2020. COBRA qualified beneficiaries now have until 60 days after the declared National Emergency to elect COBRA continuation coverage, and enrolled COBRA participants now have the same time frame under which to make premium payments for coverage. See New Department of Labor Timeline on next page.

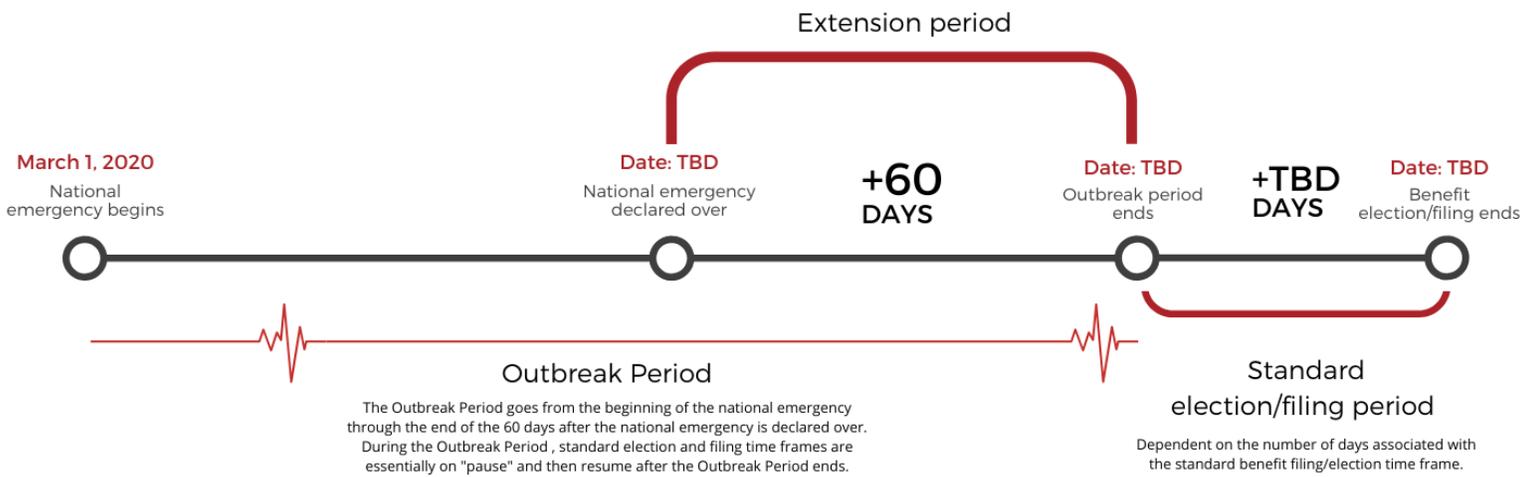
I want to offer subsidies to my COBRA Qualified Beneficiaries (QBs). How can I do that?

Subsidies can be added to QB accounts through our online link in the form of a percentage or premium or a flat amount. If you have more than 10 qualifying events to enter please contact us at cobradepartment@asibenefits.com for a template and we will upload one for you.

Employee Benefit Extensions for the COVID-19 Pandemic

8 extended
time frames
for employee
benefits

- HIPAA special enrollment period
- COBRA election period
- COBRA premium payment period
- COBRA notices from employees
- Benefit plan claim filing deadlines (FSA, HRA)
- ERISA Adverse Benefit Determination Appeal Deadline
- ERISA External Review Request Deadline
- Deadline to Submit Additional Information for External Review Request



With the increase in COVID-related terminations and eligibility status changes, how long is it taking to generate COBRA packets to my employees if I submit new change events by EDI or via the online COBRA portal? What are the current timing expectations for mail delivery of COBRA packets?

COBRA packets are mailed within 14 business day after a qualifying event has been entered directly through the ASi COBRA online notification link. Submissions through EDI or a spreadsheet will be processed within 14 business days after receipt, and packets are sent certificated mail. ASi has no specific information regarding disruptions or delays in mail delivery in different areas of the US as a result of the COVID pandemic; please consult the US Postal Service web site and/or your local news sources for information.

Can I expedite COBRA coverage for a high-need employee?

We notify carriers of enrollments the within the next business day after enrollment and after first payment is made by the QB. Carriers typically process notifications within 8-10 days. ASi can request an expedite, but cannot guarantee an expedite of benefit reinstatement.

I usually report COBRA events by manual entry using the online link. Is there a way for me to upload a file if I have a lot of events to enter?

Yes. Contact cobradepartment@asibenefits.com and we will send you a customized template to add your QB data. Send the completed template back to us and we can import for you.

Will a COBRA Qualified Beneficiary (QB) be enrolled in active coverage automatically because of these new Department of Labor Guidelines? Does a QB have active insurance coverage with the carrier if initial payment is not made within 45 days of enrollment?

No, under the new guidance, COBRA QBs have an extended payment timeline (Outbreak period + 45 days) for their premiums, but notification of enrollment to the QB's insurance carrier will not occur until the QB's initial premium payment is received. If QBs make their premium payment within the extended payment timeline, ASi will provide a retroactive enrollment notice to the insurance carrier.

Will a QB remain active with the carrier if monthly premium payments are not made?

No, the new guidance requires that we allow the QB an extended payment timeline (Outbreak period + 30 days) but does not require that they automatically have access to care during this time. To minimize risk, ASi will notify the insurance carrier to suspend active coverage 30 days after the payment due date if payment is not received. If the QB later makes payment within the extended coverage timeline, ASi will provide a retroactive enrollment notice to the insurance carrier.