



NueSynergy

CUSTOMER FOCUSED • TECHNOLOGY DRIVEN

COVID-19 Employer FAQs

FOR CONSUMER-BASED ACCOUNTS

(Revised May 2020 per IRS Notice 2020-29 & 2020-33)



COVID-19 Employer FAQs – FOR CONSUMER-BASED ACCOUNTS

Recent COVID-19 events have raised questions about how consumer-based accounts could be affected. This guide is intended to address those frequently asked participant questions.

Please Note: Where rules have been modified due to the release of IRS Notice 2020-29 and 2020-33 we have added “Revised” text to the FAQ.

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Note: These FAQs are not to be relied on as a substitute for legal or tax advice. Consult a lawyer or tax professional for guidance on individual circumstances.

Dependent Care Account (DCA)

QUESTION	ANSWER	REVISION(S)
Can I decrease or temporarily stop my DCA election amount given my child's daycare is closed?	<p>Yes. The COVID-19 emergency health declaration allows an election change for the following reasons:</p> <ul style="list-style-type: none"> ▪ <i>Reductions in employment hours</i> ▪ <i>Change in employment status</i> ▪ <i>FMLA leave</i> ▪ <i>Change in hours needed for dependent care</i> ▪ <i>Change of day care provider cost</i> 	<p>Employers have the option to allow participants to begin, cancel, increase, or decrease DCA contributions midyear for any reason.</p> <ul style="list-style-type: none"> ▪ Optional for employers to implement ▪ Plan must be amended ▪ Applies only to eligible employees
My child's school is closed and daycare expenses increased. If I'm still working, can I increase my DCA election?	<p>Yes. DCA elections may be increased if daycare expenses change due to your child's school closing.</p>	<p>Employers have the option to allow participants to begin, cancel, increase, or decrease DCA contributions midyear for any reason.</p>
I am an essential worker and my child's school is closed. I do not currently have a DCA. Can I elect a DCA for my new childcare expenses?	<p>Yes. This a life-changing event that allows DCA midyear enrollment and pre-tax contributions.</p>	<p>Employers have the option to allow participants to begin, cancel, increase, or decrease DCA contributions midyear for any reason.</p>
What happens if I get laid off or terminated and my employer terminates my DCA? Can I still submit claims?	<p>Your claim submission deadline (termination runout) is determined by your company's specific plan set up. Please reach out to your HR department or NueSynergy for details about your employer-sponsored plan.</p> <p>If your company allows claim submission after termination, the amount allowed for reimbursement would be limited. Claims will only be reimbursed up to the amount you have contributed, as of your termination date.</p>	--
How do I change my DCA election?	<p>Submit a completed status-change form documenting the related qualifying event. Forms should first be submitted to the employer for processing then emailed or mailed to NueSynergy.</p>	--
I no longer have daycare expenses. Can I receive a refund on unused DCA funds?	<p>No. At this time the IRS has not released any provisions stating that refunds of contributions are allowed due to the COVID-19 pandemic.</p>	--

DCA <i>continued</i>		
QUESTION	ANSWER	REVISION(S)
<p>Can an employer extend or add a grace period for DCA plans?</p> <p><i>*Grace Period: A post plan year rule stating the participants can utilize previous plan year funds past their plan year end date. This is only if the employer elects to add this rule to their employee's DCA plans.</i></p> <p><i>Example: Bob's Hardware is allowing its employees 60 more days to incur expenses into 2020 and pay for them with their 2019 funds.</i></p>	<p>Yes. An employer can add a grace period if their DCA does not already have one.</p> <p>Yes. An employer can extend the grace period of their DCA, if their current grace period is less than the 2.5 months.</p> <p>Reminders:</p> <ul style="list-style-type: none"> ▪ The IRS will not allow a grace period to be longer than 2.5 months past the plan year end date. ▪ If an employer is wishing to make a change to the DCA plan, it must be made for ALL employees not just some individuals. Also, all employees legally MUST be notified of this change to their plan. 	<p>Employers with DCA plans ending as of December 31, 2019 may amend their plans retroactively to allow for an extended grace period until December 31, 2020 for employees with unused funds – extending the grace period for a full year. The grace period extension is available for plans that offer either a grace period or a carryover.</p>
<p>Can an employer extend the runout period for their DCA plans?</p> <p><i>*Runout Period: A post plan year rule stating the participants have a certain amount of time to submit claims/receipts for expenses incurred during their plan year. This is only if the employer elects to add this rule to their employee's DCA plans.</i></p> <p><i>Example: Bob's Hardware is allowing its employees 30 days to submit manual claims/receipts after their plan year end date.</i></p>	<p>Yes. Employers can extend the runout deadline. Current guidance does not specify a maximum length for a runout period, although it generally should end within a reasonable period after the end of a plan year. Because the IRS recently announced a 90-day extension for the federal income tax filing deadline and HSA contributions, a similar 90-day extension of the runout period seems reasonable.</p> <p>Reminder:</p> <ul style="list-style-type: none"> ▪ If an employer is wishing to make a change to the DCA plan, it must be made for ALL employees – not just some individuals. Also, all employees legally MUST be notified of this change to their plan. 	<p>--</p>
<p>What can I do if my daycare remains closed and I have unused funds in my account at the end of the current plan year?</p>	<p>At this time, no provisions have been released by the IRS that modify the current rules. All expenses must be incurred within your plan's defined plan year and/or applicable grace period.</p>	<p>--</p>
<p>Would a DCA account be "restarted" if my daycare center reopens?</p>	<p>Generally, yes. If daycare expenses resume, a participant can "restart" contributions to their DCA.</p>	<p>Employers have the option to allow participants to begin, cancel, increase, or decrease DCA contributions midyear for any reason.</p>

Health Care Flexible Spending Account (FSA)

QUESTION	ANSWER	REVISION(S)
<p>What happens to my FSA if I have been laid off or furloughed for an unknown period?</p> <p>Am I allowed to “pause” my deductions and pick back up where I left off when I (eventually) return to work?</p> <p>If I am gone for 30+ days, am I treated as a new employee when I return?</p>	<p>Employees who have been laid off or furloughed will generally lose FSA eligibility because they are no longer working the hours needed to meet the plan's minimum eligibility requirements (example: 30 or more hours per week). This eligibility loss triggers COBRA election rights for an FSA, if the employee's FSA is “underspent.”</p> <p>If the FSA terms are modified to provide continued eligibility during the layoff or furlough period, there will be no loss of eligibility and, thus, no right to change the employee's election. However, if the employee fails to continue paying the cost of coverage, then coverage will end. (See related questions under the last section of this guide: Treatment of an FSA during a layoff or furlough)</p> <p>If eligibility is lost due to a layoff or furlough and the employee is absent for a period of 30 days or longer, the employee generally will be entitled to make a new cafeteria plan election upon return to service.</p>	--
<p>Can I elect to COBRA my FSA if I am terminated?</p>	<p>You are only allowed to utilize COBRA for your FSA if you have contributed more to the account than has been reimbursed as of your termination date.</p> <p>If you have spent more of your FSA funds than you have contributed, as of your termination date, then COBRA is not an option for you.</p>	--
<p>Can I increase my FSA election if I have increased medical expenses due to COVID-19?</p>	<p>At this time the IRS has not released any provisions to allow an increase or decrease to FSA elections due to COVID-19 expenses. A qualifying event is still required to make an election change.</p>	<p>Employers have the option to allow participants to begin, cancel, increase, or decrease health care FSA contributions midyear for any reason.</p> <ul style="list-style-type: none"> ▪ Optional for employers to implement ▪ Plan must be amended ▪ Applies only to eligible employees

Health Care FSA *continued*

QUESTION	ANSWER	REVISION(S)
Has the IRS expanded the eligible expenses list due to COVID-19?	<p>Yes. As part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act that Congress passed FSAs, HSAs, and HRAs can now be used to purchase:</p> <ul style="list-style-type: none"> Over-the-counter (OTC) medical products without a prescription from a physician, and Feminine hygiene products. 	--
Can FSA elections be changed if a member has set aside funds for a procedure that has now been postponed or cancelled due to COVID-19?	<p>Under current guidance there is little flexibility for a change in FSA elections due to a change in the circumstances regarding a participant's anticipated medical expenses. The failure to incur anticipated medical expenses is not a change in status or other event that permits an election change. The IRS has not announced any exceptions at this time.</p>	Employers have the option to allow participants to begin, cancel, increase, or decrease health care FSA contributions midyear for any reason.
Can employers extend the FSA runout deadline?	<p>Yes. Employers can extend the runout deadline. Current guidance does not specify a maximum length for a runout period, although it should end within a reasonable period after the end of a plan year. Because the IRS recently announced a 90-day extension for the federal income tax filing deadline and HSA contributions (until July 15, 2020), a similar 90-day extension of the runout period seems reasonable.</p>	--
If an employer currently has a grace period in place for their FSA, can the grace period be extended?	<p>Yes, if an employer currently has a grace period that is less than 75 days it can be extended up to the maximum. (see <i>reminder below</i>)</p> <p>Reminders:</p> <ul style="list-style-type: none"> The IRS will not allow a grace period to be longer than 2.5 months or 75 days past the plan year end date. If an employer is wishing to make a change to the FSA plan, it must be made for ALL employees not just some individuals. Also, all employees legally MUST be notified of this change to their plan. 	Employers with health care FSA plans ending as of December 31, 2019 may amend their plans retroactively to allow for an extended grace period until December 31, 2020 for employees with unused funds – extending the grace period for a full year. The grace period extension is available for plans that offer either a grace period or a carryover.

Health Savings Account (HSA)

QUESTION	ANSWER	REVISION(S)
I am not working at this time due to the COVID-19, can I change my HSA election amount?	Yes. You can update your HSA elections at any time, for any reason.	--
Did the July 15, 2020 income tax extension affect the HSA contribution schedule?	Yes. The contribution deadline has been extended from April 15, 2020 to July 15, 2020 for individuals enrolled in an HSA during the 2019 tax year who wish to make additional HSA contributions for the year.	--
Has the IRS expanded the eligible expenses list due to COVID-19?	Yes. As part of the CARES Act, FSAs, HSAs, and HRAs can now be used to purchase: <ul style="list-style-type: none"> OTC medical products without a prescription from a physician, and Feminine hygiene products. 	--
If I have access to low-cost or no-cost telehealth services before meeting my deductible, will it affect my HSA eligibility?	<p>No. The IRS released an exemption on March 27, 2020, stating telehealth and other remote care services will not prevent an individual's HSA contribution eligibility, even if the service is not subject to a high-deductible health plan (HDHP) deductible.</p> <p>This exemption does not state that telehealth services will be at no cost. We encourage you to check with your health plan provider to see what costs may be associated with these services.</p>	<p>The Notice clarifies that the CARES Act relief regarding telehealth and other remote care services can now be covered before the plan deductible has been satisfied, and it will not disqualify a participant's eligibility to make contributions to an HSA.</p> <p>This provision is effective immediately and will last until December 31, 2021. The Notice provides that these services provided after January 1, 2020 will also be permitted in an HSA-compatible HDHP.</p>

HSA *continued*

QUESTION	ANSWER	REVISION(S)
<p>If I receive a low-cost or no-cost COVID-19 test, will it affect my HSA eligibility?</p>	<p>No. The IRS released a notice on March 27, 2020, that allows HDHPs to cover testing and treatment for COVID-19 pre-deductible. This means coronavirus testing and treatment will not prevent an individual from being eligible to contribute to an HSA – even if the coverage is pre-deductible. These expenses are also considered a qualified medical expense under an HDHP, and HSA funds can be used to pay for them.</p> <p>The IRS and Centers for Medicare & Medicaid Services (CMS), consistent with the coverage requirements implemented under the Families First Coronavirus Response Act (FFCRA), have instructed health plans to offer no-cost testing, and health plans have announced that such tests for those with HDHPs will be pre-deductible.</p>	<p>The newly released Notice clarifies that the relief allowing HDHPs to provide benefits for COVID-19 testing and treatment on a no- or low-deductible basis applies to reimbursements of expenses incurred on or after January 1, 2020.</p> <p>The Notice also confirms that the panel of diagnostic testing for influenza A & B, norovirus and other coronaviruses, and respiratory syncytial virus (RSV) and any items or services required to be covered with zero cost sharing per the CARES Act are to be treated as COVID-19 testing and treatment.</p>

Parking and or Transit Accounts (PGN/TRN)

QUESTION	ANSWER	REVISION(S)
<p>Can I change my election/contribution amounts for my Parking or Transit Account because of the COVID-19 pandemic?</p>	<p>Yes. Transit contribution elections can be adjusted prospectively during the year. Employees can reduce their pre-tax salary reductions for transit benefits to \$0 while working from home.</p>	<p>--</p>
<p>If a transit pass is purchased that will expire before I return to work, or can I get a refund?</p>	<p>If a transit pass purchased under a qualified transportation plan expires, the employee generally loses the value of the pass. If the transit provider agrees to refund some or all of the cost of the plan to the transit plan, the refund might be credited to the employee's account and made available for future transit expenses, so long as the employee continues to be eligible for the transit plan. Funds cannot be cashed out.</p>	<p>--</p>

Treatment of an FSA During a Layoff or Furlough

What is the difference between a furlough and a layoff?

A furlough is an alternative to layoff. When an employer furloughs its employees, it requires them to work fewer hours or to take a certain amount of unpaid time off. Employers must be careful when furloughing exempt employees so that they continue to pay them on a salary basis and do not jeopardize their exempt status under the Fair Labor Standards Act (FLSA).

A layoff is a separation from payroll. An employee is laid off because there is not enough work to perform. The employer, however, believes that this condition will change and intends to recall the employee when work becomes available.

For the purposes of an FSA, layoffs are treated like other employment terminations. There is a COBRA qualifying event that allows for the continuation of benefits (e.g., medical, dental, vision, FSA, etc.) upon termination for those covered under one of the benefit plans.

Employers have the option but are not required to subsidize COBRA premiums for terminated employees. This can be a viable option for employers considering rehiring these termed employees once business returns.

Treatment of an FSA during a layoff or termination

COBRA regulations allow you to continue your FSA following termination if you have contributed more to the account than has been reimbursed as of your termination date.

If you have spent more of your FSA funds than you have contributed as of your termination date, then COBRA is not an option for you.

Treatment of an FSA During a Layoff or Furlough *continued*

Furloughed employees may or may not remain benefit eligible. Whether the employee remains benefit eligible will determine how the FSA plan is set up.

Employee loss of eligibility

COBRA regulations allow you to continue your FSA following termination if you have contributed more to the account than has been reimbursed as of your termination date.

If you have spent more of your FSA funds that you have contributed as of your termination date, then COBRA is not an option for you.

Employee maintains eligibility

If an employee can maintain eligibility while on furlough, employers have two options to manage the leave of absence and continued cafeteria plan contributions. NOTE: Employers are generally prohibited from reducing their employees' elections to reflect their reduced contributions.

An employer may:

(a) allow an employee on unpaid leave to either revoke or continue FSA coverage and maintain contributions; or

(b) allow the FSA coverage to continue but allow the employee to discontinue contributions. If the employer continues coverage during an unpaid leave, the employer has several options on how to manage contributions. (see below section "Contribution Collection During Leave")

Treatment of an FSA During a Layoff or Furlough *continued*

An employer can collect an employee's FSA contributions to maintain coverage during a paid or unpaid leave of absence. Employees pay their contributions through one of the methods defined below and upon returning from leave are permitted to re-enter the plan on the same basis prior to the employee's leave.

Contribution collection during leave

Prepayment: Under the prepayment option, the employee increases his/her salary redirection in an amount that will cover the total contributions that will come due during the leave.

Pay-as-you-go: The employee continues to pay contributions on a regular basis for the duration of leave. If the employee continues to receive a salary, the applicable contributions are paid pre-tax as if they had not taken the leave. If the employee's leave is unpaid, the employer funds the necessary coverage during the leave period, but the employee is required to reimburse the employer at regular intervals with after-tax funds for the contributions that come due during the leave.

Catch Up: The employer provides the funding for necessary coverage during the leave and subsequently withholds "catch-up" amounts from the employee's pay upon their return to work.

NOTE: If an employee is unable to meet payment obligations described above and coverage is terminated, the employer can implement one of the two options below upon the employee's return to work.

1. Proration: The actual amounts contributed by the employee would remain in effect for the duration of the plan year, but the expenses incurred by the employee during the lapse in coverage period would not be reimbursable and the maximum contribution amount would be reduced proportionately for the time that the employee was not paying premiums.
2. Reinstatement: The Participant may elect to reinstate the level of coverage in effect prior to leave, with applicable contribution amounts being made up for the remainder of the Plan Year. The maximum coverage level will remain in effect from the employee's election, but the employee cannot submit claims for reimbursement incurred during the coverage period lapse.

Can participants claim expenses incurred during an unpaid layoff or furlough once they return to work?

Yes. As long as the plan document is amended to reflect that, and all employees are notified and treated the same way. The key is that eligibility for coverage would need to continue through the layoff/furlough.