

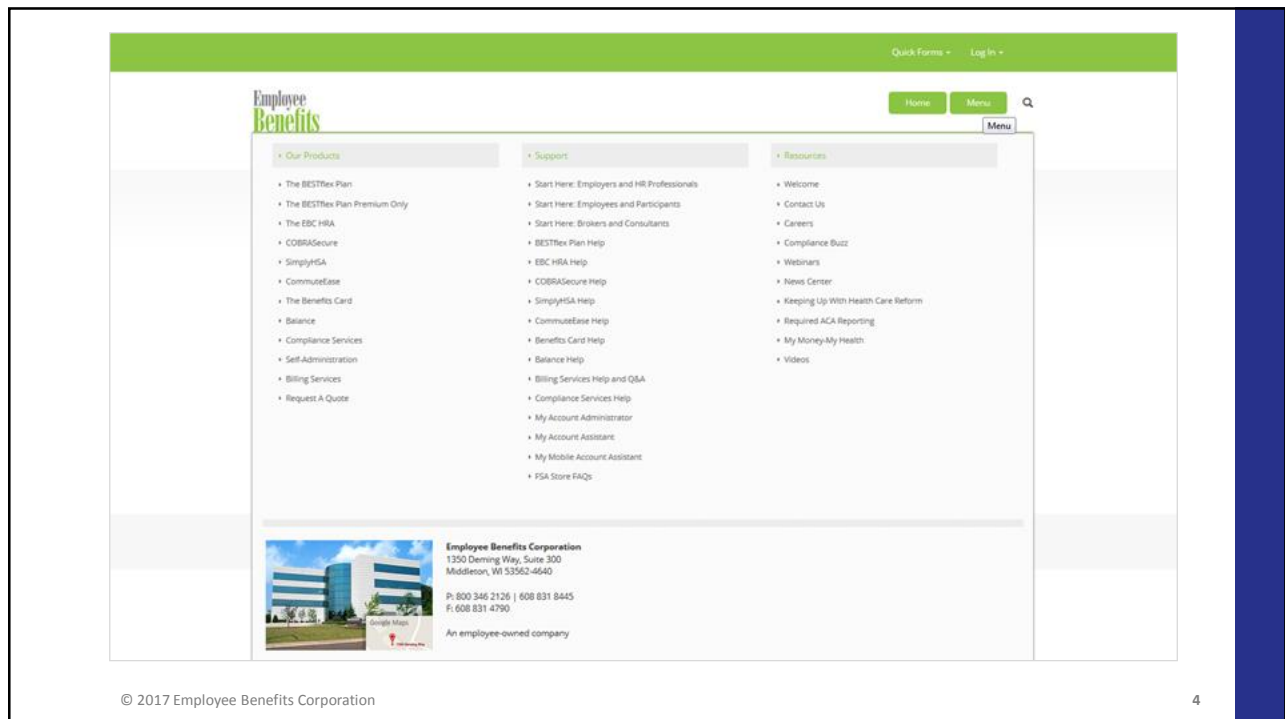
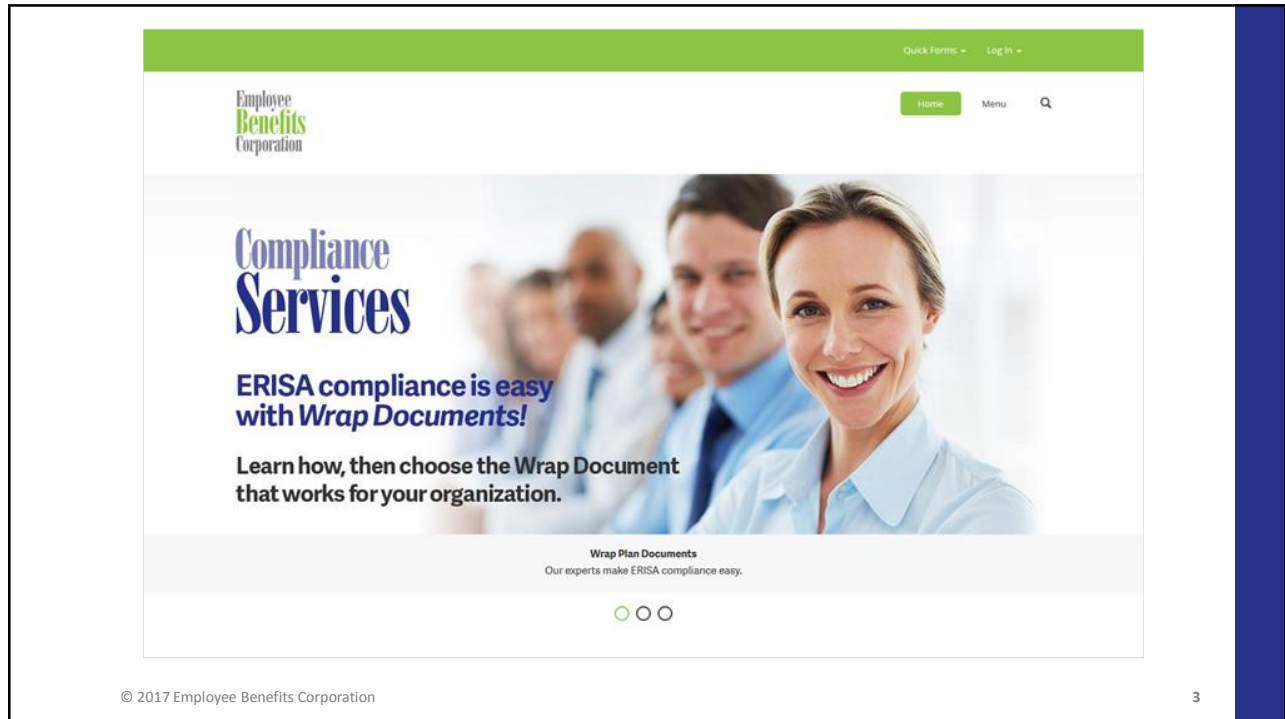


Jessica Theisen

Compliance Advisor, FCS

Employee Benefits Corporation

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Permitted Election Changes Part 3 - Leaves of Absence



- “ Review
- “ Permitted election change events overview
- “ Types of leaves
- “ Changes allowed due to FMLA leave
- “ Changes allowed due to USERRA leave
- “ Changes allowed due to personal (non-FMLA) leave
- “ Other considerations while on leave
- “ Common compliance issues



Review

Review

“ Elections are made:

- . Prior to satisfying waiting period by a new employee
- . Within 30 days of hire if eligible on date of hire
- . Prior to start of new plan year by existing eligible employees
- . Mid-year due to a recognized permitted election change event

Review

“ Elections are:

- . Prospective
- . Irrevocable for the period of coverage (plan year), unless...
 - “ Mid-year change allowed if you experience a permitted election change event
- . If not irrevocable, no tax free status

Review

- “ 16 permitted election change events (Treasury Reg. § 1.125-4)
- “ Change must be on account of and consistent with event
(*no time period specified for determining “on account of”*)
- “ No requirement to adopt any election changes in cafeteria plan
 - . Including changes increases participation which increases tax savings for employers and participants
 - . BESTflex Plan Document includes all 16

Review

- “ Changes requested prior to event are effective on event date
- “ Cafeteria plans generally allow a 30-day period after the event to request a change as a proxy for “on account of”
- “ Effective date of election change is later of
 - . the event date
 - . the date the form is signed (within the allowable period)
- “ HIPAA special enrollment allows retroactive enrollment of newborn/adopted child to event date for non-excepted plans (most health care FSAs are *excepted*)



Permitted election change events overview

Permitted election change events overview

- Change in Status
- Cost changes with automatic increases/decreases in elective contributions
- Significant cost changes
- Significant coverage curtailment (with or without loss of coverage)
- Addition or significant improvement of a benefit package option
- Changes under other employer plan
- Loss of health coverage under a government or educational institution
- 401(k) election changes
- HIPAA special enrollment rights
- COBRA qualifying event
- Judgments, decrees and court orders
- Medicare or Medicaid entitlement
- FMLA leaves of absence**
- Pre-tax HSA Contributions
- Mid-year reduction in hours with intent to enroll in another health insurance plan
- Mid-year enrollment in a Marketplace Qualified Health Plan



Types of Leaves

Types of Leaves

“ Three broad categories

- . Family Medical Leave Act (FMLA) Leave
 - “ Applies to certain employers
 - “ Applies to certain employees
 - “ Applies only to specific circumstances
 - “ Affords benefit protection for health plans
 - . Includes health care flexible spending accounts (FSAs)
 - . Includes health reimbursement arrangements (HRAs)

Types of Leaves

“ Three broad categories

- . USERRA Leave
 - “ Applies to all employers
 - “ Applies to certain employees
 - “ Applies only to specific circumstances
 - “ Affords benefit protection for health plans
 - . Includes health care flexible spending accounts (FSAs)
 - . Includes health reimbursement arrangements (HRAs)

Types of Leaves

“ Three broad categories

- . Personal (non-FMLA) Leave

- “ Applies to all employers

- “ Applies to certain employees

- “ Applies only to specific circumstances

- “ May or may not afford benefit protection for all plans



Changes allowed due to FMLA leave

Changes allowed due to FMLA leave

“ FMLA Overview

- . FMLA only applies to group health plans
 - “ Group health plan premiums (health, dental, vision, etc.)
 - “ Health care FSA
 - “ HRA
- . Dependent care FSAs and individual premium accounts are not FMLA-protected
- . Employee is offered open enrollment if on FMLA at the time
- . Leave beyond FMLA period is personal (non-FMLA) leave

Changes allowed due to FMLA leave

“ Paid FMLA leave

- . Paid FMLA is not a Permitted Election Change Event

“ Unpaid FMLA leave

- . Occurs once employee receives NO compensation
- . Employer must continue its share of payment unless employee drops coverage during FMLA period

Changes allowed due to FMLA leave

“ Unpaid FMLA leave

- . Unpaid FMLA leave is a Permitted Election Change Event
 - “ Employee can suspend the plan, not make up missed deductions and reduce election by missed deductions
 - “ Employee can terminate plan on date unpaid FMLA leave begins



Changes allowed due to USERRA leave

Changes allowed due to USERRA leave

“ USERRA Overview

- . USERRA only applies to group health plans
 - “ Group health plan premiums (health, dental, vision, etc.)
 - “ Health care FSA
 - “ HRA
- . Dependent care FSAs and individual premium accounts are not USERRA-protected
- . Employee is offered open enrollment if on USERRA at the time

Changes allowed due to USERRA leave

“ USERRA leave is a Permitted Election Change Event

- . Employees can terminate plan on date USERRA leave begins
- . Employees can request a taxable pay-out of unused health care FSA deposits so long as this is requested by the last day claims could be paid for the year
- . Employee can re-enter during the plan year, not make up missed deductions and reduce election by missed deductions



Changes allowed due to personal (non-FMLA) leave

Changes allowed due to personal (non-FMLA) leave

“ Personal (non-FMLA) Leave Overview

- . Any leave that is not classified as FMLA leave or USERRA
- . Leave that started as FMLA leave or USERRA and continues beyond the FMLA or USERRA period
- . Since dependent care FSAs and individual premium accounts are not FMLA-protected, only personal (non-FMLA) leave changes apply
- . Employee is only offered open enrollment if on personal (non-FMLA) leave if the individual was eligible at the time

Changes allowed due to personal (non-FMLA) leave

“ Paid personal (non-FMLA) leave

- . Paid personal (non-FMLA) leave is not a Permitted Election Change Event unless
 - “ Leave is over 2 weeks in length
 - “ Leave causes loss of eligibility for dependent care FSA reimbursement

Changes allowed due to personal (non-FMLA) leave

“ Unpaid personal (non-FMLA) leave

- . Occurs once employee receives NO compensation
- . Employer leave policy and plan documents determine whether eligibility is lost
- . Employer leave policy dictates whether employer continues its share of payment (typically will continue if eligible and will not if eligibility is lost)

Changes allowed due to personal (non-FMLA) leave

“ Unpaid personal (non-FMLA) leave

- . When eligibility is not lost
 - “ **No Permitted Election Change unless**
 - . Leave is over 2 weeks in length
 - . Leave causes loss of eligibility for dependent care FSA
- . When eligibility is lost
 - “ **Participant is dropped from all plans**
 - . HIPAA Special Enrollment under another employer’s plan
 - “ **An offer of COBRA may need to be extended**



Other considerations while on leave

Other considerations while on leave

- “ **Making up missed deductions**
 - . Which options will the company allow?
 - “ **Catch up**
 - . Make up missed deductions upon return
 - “ **Pre-pay**
 - . Pre-pay missed deductions prior to leave
 - “ **Pay as you go**
 - . Pay missed deductions while on leave

Other considerations while on leave

- “ **Permitted Election Change Event occurring while on leave**
 - . If employee is covered under plan
 - “ **Change corresponding to event is allowed**
 - . If employee is not covered under plan, but is eligible
 - “ **Change corresponding to event is allowed**
- “ **Employee ceases to pay share of premium**
 - . Employer can cease coverage after giving 15 day written notice
 - . Coverage must be reinstated upon return from FMLA leave

Other considerations while on leave

“ Employee terminates while on leave

- . If employee is covered under plan
 - “ COBRA may need to be offered
 - “ Employee may be added under another employer’s plan
 - “ If employer covered plan costs on employee’s behalf, may be very difficult to recoup payments

Other considerations while on leave

“ Employee terminates while on leave

- . If employee is not covered under plan
 - “ Employee out on FMLA leave
 - . COBRA may need to be offered
 - . Employee may be added under another employer’s plan
 - “ Employee out on personal leave
 - . COBRA need not be offered at this time because it was offered when they went out on leave

Other considerations while on leave

“ Back to back leaves

- . Employee out on an FMLA leave continues leave after FMLA period is exhausted
 - “ Analyze whether eligibility is now lost
 - “ Make an offer of COBRA, if applicable

Other considerations while on leave

“ Example

- . Jill has
 - “ Medical insurance
 - “ Dental insurance
 - “ A \$1,200 health care FSA election
 - “ A \$5,000 dependent care FSA election
- . Jill is pregnant and has completed all FMLA paperwork
- . Jill plans to be out until baby is 12 weeks old
- . Jill wants to keep all benefits active while on leave

Other considerations while on leave

“ Example (continued)

- . Jill’s employer has an hourly requirement for the dependent care FSA and no leave policy extending eligibility for the plan
 - “ **Jill will lose eligibility due to her leave**
 - “ **Jill’s dependent care FSA election will terminate once leave is unpaid**
- . Jill’s FMLA-eligible benefits will remain open
 - “ **Health insurance**
 - “ **Dental insurance**
 - “ **\$1,200 health care FSA**

Other considerations while on leave

“ Example (continued)

- . Jill’s employer will not allow Jill to make up missed payroll deductions upon return, so Jill opts to pay the deductions (post-tax) while she is on the unpaid portion of her leave
- . Jill is put on bed rest in her last month of pregnancy and starts FMLA leave early
- . Jill still wants to be on leave until baby is 12 weeks old and employer agrees

Other considerations while on leave

“ Example (continued)

- . During her leave, she uses 2 weeks of paid vacation

“ Deductions continue as usual for plans

- . Medical insurance
- . Dental insurance
- . \$1,200 health care FSA
- . \$5,000 dependent care FSA

Other considerations while on leave

“ Example (continued)

- . Then she begins her unpaid portion

“ Dependent care FSA terminates

“ Sends in checks to cover active plan payments

“ Missed payments may result in canceled coverage or additional deductions upon return

- . Expenses incurred after cancelation are not reimbursable

Other considerations while on leave

“ Example (continued)

- . Jill gives birth to a healthy baby boy
 - “ **Jill wants to add her son to her active coverage**
 - . Medical insurance and change to a different plan (HMO to PPO, vice versa)
 - . Dental insurance (if she really wants to and the insurance carrier allows)
 - . Increase her health care FSA election

Other considerations while on leave

“ Example (continued)

- . Her 12-week FMLA is exhausted
 - “ **Jill’s employer has an hourly requirement and no policy indicating that individuals on personal leave remain eligible**
 - “ **Jill is no longer eligible and therefore her coverage terminates**
 - “ **COBRA is offered**
 - . Medical insurance
 - . Dental insurance
 - . Non-excepted health care FSA
 - . Excepted health care FSA if not overspent

Other considerations while on leave

“ Example (continued)

- . Jill elects COBRA but fails to make second month’s payment
 - “ **Jill’s coverage terminates**
 - . Any claims incurred after cancelation would not be reimbursable
- . Jill returns to work and meets hourly requirement
 - “ **Jill experiences a qualifying event and may re-enroll**
 - . Medical insurance
 - » **May elect any coverage, not just the coverage she had prior**
 - . Dental insurance
 - » **May elect any coverage, not just the coverage she had prior**

Other considerations while on leave

“ Example (continued)

- . Jill returns to work and meets hourly requirement
 - “ **Jill experiences a qualifying event and may re-enroll**
 - . Health care FSA
 - » **Blended approach would allow Jill to elect any amount so long as it exceeds claims paid to date and deductions to date**
 - . Dependent care FSA
 - » **Blended approach would allow Jill to elect any amount so long as it exceeds claims paid to date and deductions to date**



Common compliance issues

Common compliance issues

“ Not having a leave policy

- . Leads to employee and employer confusion

“ FMLA Leave

- . What options are available to pay missed premiums
- . When is coverage terminated for non-payment
- . What is the expectation when FMLA leave is exhausted and personal leave begins
- . What is the expectation if the employee doesn't return to work

Common compliance issues

“ Not having a leave policy

- . Leads to employee and employer confusion

“ Personal Leave

- . Is eligibility lost
- . If not
 - » What options are available to pay missed premiums
 - » When is coverage terminated for non-payment
 - » What is the expectation if the employee doesn't return to work

Common compliance issues

“ Not discussing options before employee goes on leave

- . Leads to employee and employer confusion

“ FMLA Leave

- . What changes in the election are available
- . How their choice determines the coverage period
 - » May cause a blackout period
 - » Runout period may apply
- . Expectations on timelines for payment while on leave
- . What will be done if leave crosses plan years

Common compliance issues

- “ **Not discussing options before employee goes on leave**
 - . Leads to employee and employer confusion
 - “ **FMLA Leave**
 - . Set expectations for how options change if leave extends beyond FMLA leave timelines
 - . Expectations if employee does not return following leave(s)

Common compliance issues

- “ **Not discussing options before employee goes on leave**
 - . Leads to employee and employer confusion
 - “ **Personal Leave**
 - . If eligibility is not lost
 - » **Expectations on timelines for payment while on leave**
 - » **What will be done if leave crosses plan years**
 - » **Expectations if employee does not return following leave**

Common compliance issues

- “ **Not offering Open Enrollment to employees on FMLA leave**
 - . FMLA violation
 - . May lead to fines and penalties if legal action is taken
- “ **Applying a waiting period upon return from leave**
 - . Not a new employee
 - . May lead to fines and penalties if legal action is taken

Common compliance issues

- “ **Not offering COBRA to ineligible employees on personal leave**
 - . Reduction of hours is a COBRA event if coverage is lost
 - . No repayment obligation if no signed agreement
- “ **Treating personal leave as FMLA leave when FMLA leave is exhausted**
 - . Some options under FMLA are not allowable under non-FMLA
 - “ **Employee can suspend the plan, not make up missed deductions and reduce election by missed deductions**

Common compliance issues

- “ Treating personal leave as FMLA leave when FMLA leave is exhausted
 - . May be operating contrary to leave policy and plan documents
 - “ Insurance plans may refuse to extend coverage leaving employer to self-fund claims
 - “ May set a precedent for future employees leading to possible legal action if employer action appears discriminatory
 - . COBRA may need to be offered
 - “ If employee is not covered while on FMLA (even due to choice)

Questions?

Thank you for attending!!

Any questions can also be addressed by e-mail or phone:

Compliance Department

(800) 346 -2126

compliance@ebcflex.com

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