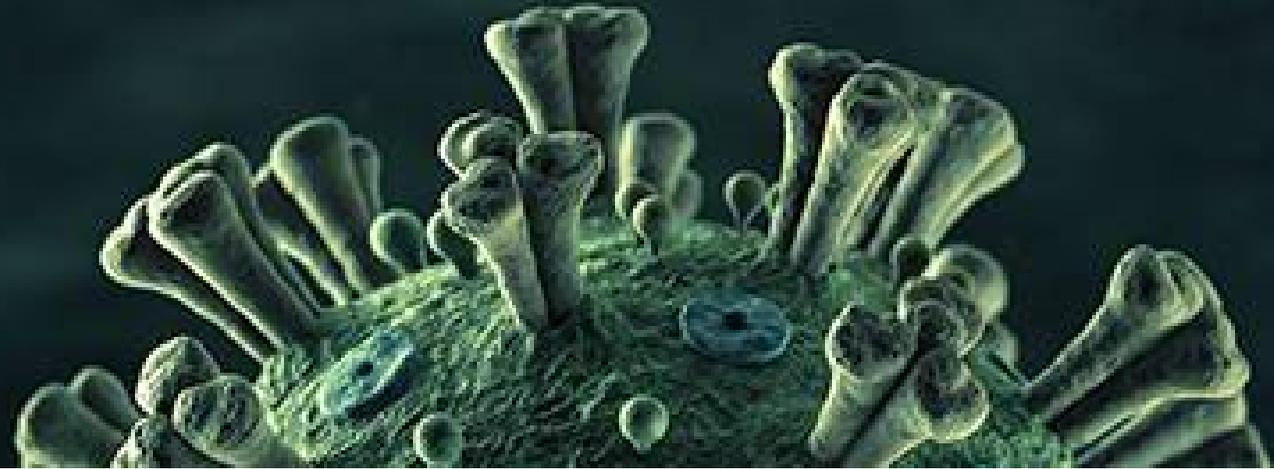


# COVID-19 Latest Insights



## Optional or Mandatory: Quick Reference Chart of COVID-19 Related DOL Deadline Extensions and IRS Election Changes

Revised 6/11/2020

	Recent Guidance and Changes	Applicable Timeframe	Mandatory or Optional	Compliance Considerations	Employer Action Required
<b>Section 125:</b> <b>Mid-Year Election Changes</b> <b>Health FSA (including Limited Purpose Health FSA)</b>	<p><b>Mid-Year Election Changes</b></p> <ul style="list-style-type: none"> <li>• IRS Notice 2020-29 allows cafeteria plans to permit eligible employees to: Make a new election, effective prospectively, to pay for employer-sponsored health coverage on a pre-tax basis if the employee had initially declined coverage.</li> <li>• Revoke an existing pre-tax premium election and make a new election, effective prospectively, to pay for a different type or level of employer-sponsored health coverage on a pre-tax basis.</li> <li>• Revoke an existing pre-tax premium election to correspond to the cancellation of employer-sponsored health coverage, provided the employee attests that he/she is enrolled, or will immediately enroll, in other health coverage. (A sample attestation template can be found at IRS Notice 2020-29, page 8.)</li> </ul>	<p><i>Temporary:</i> through 12/31/2020 only</p>	<p>Optional</p>	<p>Employer has discretion (e.g., only allow an election change to make a new election, limit changes to a certain time period); however, carrier must agree to permit the changes.</p>	<ol style="list-style-type: none"> <li>1. Confirm with carrier (as applicable)</li> <li>2. Notify employees of plan changes</li> <li>3. Amend plan document by 12/31/2021</li> </ol>
	<p><b>Extended Run-out Period for Health FSA</b></p> <p>The ERISA Claims and Appeals relief noted above may also extend the run-out period for a Health FSA. For example, if a calendar year plan permits participants to submit valid claims for 2019 expenses until March 31, 2020 (i.e., the run-out period), the Outbreak Period must be disregarded. Meaning, participants would have until 31 days following the end of the Outbreak Period to submit claims for reimbursement (which is the 31-day remainder of the run-out period).</p>	<p><i>Temporary:</i> Outbreak Period is March 1, 2020 until 60 days following end of the National Emergency (which has not yet been announced)</p>	<p>Mandatory</p>	<p>This extension does not provide additional time to incur claims.</p>	<p>Notify plan participants of extended deadlines</p>

<p>(Cont'd) Section 125: Mid-Year Election Changes Health FSA (including Limited Purpose Health FSA)</p>	<p><b>Mid-Year Election Changes (Health FSA)</b> IRS Notice 2020-29 allows cafeteria plans to permit eligible employees to:</p> <ul style="list-style-type: none"> <li>• Make any type of mid-year election change (e.g., make a new election, revoke an existing election, or increase or decrease an existing election), effective prospectively, under a Health FSA for any reason.</li> </ul>	<p><i>Temporary:</i> through 12/31/2020 only</p>	<p>Optional</p>	<p>Participant's election change cannot cause a decrease below the greater of what has already been contributed or reimbursed. Only eligible expenses that are incurred during the period of coverage can be paid for/reimbursed.</p>	<p>1. Notify employees of plan changes 2. Amend plan document by 12/31/2021</p>
	<p><b>Extended Claims Period</b> IRS Notice 2020-29 allows certain cafeteria plans to provide an extended period to incur Health FSA claims through December 31, 2020 for unused amounts remaining in the Health FSA.</p> <ul style="list-style-type: none"> <li>• Applicable only for Health FSAs with a plan year ending in 2020 or grace period ending in 2020.</li> <li>• Health FSAs with a grace period or carryover provision can be amended to allow for this extended claim period.</li> </ul>	<p><i>Temporary:</i> through 12/31/2020 only</p>	<p>Optional</p>	<p>If a General-Purpose Health FSA is amended to permit the extended period to incur claims, HSA eligibility will be impacted during the extended period (unless there is a \$0 FSA balance at the end of the plan year or grace period).</p>	<p>1. Notify plan participants of plan changes 2. Amend plan document by 12/31/2021</p>
	<p><b>Increase in Health FSA Carryover Maximum Amount</b> IRS Notice 2020-33 increases the Health FSA carryover limit.</p> <ul style="list-style-type: none"> <li>• Amount of unused Health FSA funds participants can carryover starting from the 2020 plan year to the 2021 plan year is increased from \$500 to \$550 (then, increased by index each year thereafter).</li> </ul>	<p><i>Permanent:</i> Applicable for 2020 plan year and beyond</p>	<p>Optional</p>	<p>Carryover amount is subject to increase for future years (as the carryover limit is 20% of the maximum annual Health FSA contribution limit). This change is not a temporary change tied to the COVID-19 public health emergency. Implementing this change does not also allow for a mid-year Health FSA election change (although, the plan can also be amended to permit a prospective election change as mentioned above).</p>	<p>1. Notify plan participants of plan changes 2. Amend plan document by 12/31/2021</p>
	<p><b>Expanded Eligible Expenses for Health FSA</b> The CARES Act expanded the IRS eligible expenses to include OTC (even without prescription) and menstrual care products. <i>Does not apply to Limited Purpose Health FSAs.</i></p>	<p><i>Permanent:</i> effective 1/1/2020</p>	<p>Optional</p>	<p>Many vendors are assuming plans will include OTC and menstrual care products as part of their eligible expenses and are automatically updating the plan documents, unless the employer specifically communicates otherwise (i.e., to not include such expenses). Employers should discuss with any applicable vendors accordingly.</p>	<p>1. Notify plan participants of additional eligible expenses (i.e., OTC and menstrual care) 2. Review plan document and update as needed</p>
<p>Dependent Care FSA</p>	<p><b>Mid-Year Election Changes (Dependent Care FSA)</b> IRS Notice 2020-29 allows cafeteria plans to permit eligible employees to:</p> <ul style="list-style-type: none"> <li>• Make any type of mid-year election change (e.g., make a new election, revoke an existing election, or increase or decrease an existing election), effective prospectively, under a Dependent Care FSA for any reason.</li> </ul>	<p><i>Temporary:</i> through 12/31/2020 only</p>	<p>Optional</p>	<p>Note that under current Section 125 rules, participants may prospectively change their election amount or revoke election per the IRS allowable event of a "change in the cost and coverage."</p>	<p>1. Notify employees of plan changes 2. Amend plan document by 12/31/2021</p>
	<p><b>Extended Claims Period</b> IRS Notice 2020-29 allows certain cafeteria plans to provide an extended period to incur Dependent Care FSA claims through December 31, 2020.</p>	<p><i>Temporary:</i> through 12/31/2020 only</p>	<p>Optional</p>	<p>Applicable only for Dependent Care FSAs with a plan year ending in 2020 or grace period ending in 2020.</p>	<p>1. Notify plan participants of plan changes 2. Amend plan document by 12/31/2021</p>

HRA	<p><b>Extended Run-out Period for an HRA</b> The ERISA Claims and Appeals relief noted above may also extend the run-out period for an HRA. For example, if a calendar year plan permits participants to submit valid claims for 2019 expenses until March 31, 2020 (i.e., the run-out period), the Outbreak Period must be disregarded. Meaning, participants would have until 31 days following the end of the Outbreak Period to submit claims for reimbursement (which is the 31 day remainder of the run-out period).</p>	<p><i>Temporary:</i> Outbreak Period is March 1, 2020 until 60 days following end of the National Emergency (which has not yet been announced)</p>	Mandatory	<p>This extension does not provide additional time to incur claims.</p>	<p>Notify plan participants of extended deadlines</p>
	<p><b>Timing for ICHRA Reimbursements Clarified</b> IRS Notice 2020-33 clarifies that a plan is permitted to treat an expense for a premium for health insurance coverage as incurred on (1) the first day of each month of coverage on a pro rata basis, (2) the first day of the period of coverage, or (3) the date the premium is paid.</p>	<p><i>Permanent</i></p>	Optional	<p>For example, an ICHRA with a calendar year plan year may immediately reimburse a substantiated premium for health insurance coverage that begins on January 1 of that plan year, even if the covered individual paid the premium for the coverage prior to the first day of the plan year.</p>	<p>Notify plan participants of any changes to claims substantiation processes</p>
	<p><b>Expanded Eligible Expenses for HRA</b> The CARES Act expanded the IRS eligible expenses to include OTC (even without prescription) and menstrual care products.</p>	<p><i>Permanent:</i> effective 1/1/2020</p>	Optional	<p>Many vendors are assuming plans will include OTC and menstrual care products as part of their eligible expenses and are automatically updating the plan documents, unless the employer specifically communicates otherwise (i.e., to not include such expenses). Employers should discuss with any applicable vendors accordingly.</p>	<p>3. Notify plan participants of additional eligible expenses (i.e., OTC and menstrual care) 4. Review plan document and update as needed</p>
HSA	<p><b>HSA Eligibility</b> IRS Notice 2020-29 clarifies that previous guidance regarding coverage related to COVID-19 without cost-sharing (or low cost-sharing) and the exemption for telehealth services may be applied retroactively to January 1, 2020.</p>	<p><i>Temporary:</i> applies to plan years beginning on or before 12/31/2021</p>	Mandatory	<p>As background, IRS Notice 2020-15 (issued March 11, 2020) explained that HDHPs can cover testing and treatment of COVID-19 at low or no cost-sharing without impacting one's ability to make or receive contributions into an HSA.</p> <p>Further, the CARES Act provides a temporary safe harbor for providing coverage for telehealth services – allowing HDHPs to cover telehealth without a deductible so that an otherwise HSA eligible individual with coverage under an HDHP may receive coverage for telehealth before satisfying the deductible of the HDHP and still contribute to an HSA.</p>	<p>Notify plan participants</p>
	<p><b>Expanded Eligible Expenses for HSA</b> The CARES Act expanded the IRS eligible expenses to include OTC (even without prescription) and menstrual care products.</p>	<p><i>Permanent:</i> effective 1/1/2020</p>	Mandatory	<p>An HSA, as an individual account owned by the account holder, can be used for the expanded eligible expenses.</p>	<p>5. Notify plan participants of additional eligible expenses (i.e., OTC and menstrual care) 6. Review plan document and update as needed</p>

<p><b>HIPAA: Special Enrollment</b></p>	<p><b>Extended Deadlines</b> Disregard Outbreak Period when calculating the following deadline:</p> <ul style="list-style-type: none"> <li>• 30 or 60-day deadline to request a special enrollment under HIPAA</li> </ul>	<p><i>Temporary:</i> Outbreak Period is March 1, 2020 until 60 days following end of the National Emergency (which has not yet been announced)</p>	<p>Mandatory</p>	<p>This extension is only applicable to <i>enrollment</i> requests that are HIPAA special enrollment rights (acquisition of a dependent via marriage/birth/adoption, loss of eligibility for other group coverage/Medicaid or CHIP, gain of eligibility for Medicaid or CHIP premium assistance program). For example, a request to <i>drop</i> coverage due to marriage is not a HIPAA special <i>enrollment</i> right.</p>	<p>Notify employees of extended deadlines</p>
<p><b>ERISA: Claim Deadlines/ Appeals</b></p>	<p><b>Extended Deadlines</b> Disregard Outbreak Period when calculating the following deadlines:</p> <ul style="list-style-type: none"> <li>• Deadlines for individuals to file claims for benefits, for initial disposition of claims, and for providing claimants a reasonable opportunity to appeal adverse benefit determinations under ERISA plans and non-grandfathered group health plans.</li> <li>• Deadlines for providing a state or federal external review process following exhaustion of the plan's internal appeals procedures for non-grandfathered group health plans.</li> </ul>	<p><i>Temporary:</i> Outbreak Period is March 1, 2020 until 60 days following end of the National Emergency (which has not yet been announced)</p>	<p>Mandatory</p>	<p>This will impact HRA and Health FSA administration if the claims runout period falls within the Outbreak Period (see HRA and Health FSA sections).</p>	<p>Notify plan participants of extended deadlines</p>
<p><b>COBRA</b></p>	<p><b>Extended Deadlines</b> Disregard Outbreak Period when calculating the following deadlines:</p> <ul style="list-style-type: none"> <li>• 60-day COBRA election period</li> <li>• 30- or 60-day deadline to notify the plan of a COBRA qualifying event</li> <li>• 60-day deadline to notify the plan of a determination of a disability</li> <li>• 14-day deadline to furnish COBRA election notices</li> <li>• 45-day deadline for participants to make first COBRA payment</li> <li>• 30-day deadline for subsequent COBRA premium payments</li> </ul>	<p><i>Temporary:</i> Outbreak Period is March 1, 2020 until 60 days following end of the National Emergency (which has not yet been announced)</p>	<p>Mandatory</p>	<p>These extensions present COBRA administration challenges, particularly for elections and payments. An employee must have until the extended due date to make an election or payment (coverage would be retroactive as long as the election and payment is made by the extended due date). Employers should discuss with their COBRA administrator, TPA, and carrier (as applicable) regarding how the coverage election and coverage termination/reinstatement will be administered.</p>	<p>At this time, among other open questions, there is no guidance stating that any COBRA notice changes or additional notice to current participants are required, or on when coverage is active for beneficiaries who have elected COBRA during the extension but have not paid the premium.</p>

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