



## Benefits for employees during layoffs, furloughs and unpaid leave

During this uncertain time, many employers that participate in the insurance and retirement plans administered by PEBA have made difficult decisions regarding the status of their employees. These employment actions include reductions in hours or salary, periods of unpaid leave, furloughs and layoffs. There have not been any changes to the basic participation rules for the state's insurance and retirement benefits, and existing plan rules will apply to employees who have had changes in their employment status.

### Types of employment actions

The terminology used by participating employers to describe these employment actions often varies from employer to employer. For example, what one employer calls a furlough, another employer may call a temporary layoff. The discussion below is intended to explain how these various employment actions are described for the purposes of the employee benefit plans administered by PEBA.

### Unpaid leave or reductions in hours or salary

If an employee has a reduction in hours or salary or is required to go on leave without pay (LWOP), but has not been terminated from employment, the employee is subject to the normal plan rules regarding participation and the accrual of benefits in the insurance and retirement plans administered by PEBA for employees that have reduced hours or compensation or who go on LWOP.<sup>1</sup> For general information on these plan participation rules, please refer to Pages 57-60 of the [Benefits Administrator Manual](#) for insurance benefit questions and Pages 38-39 of the [Covered Employer Procedures Manual](#) for retirement benefit questions. Certain details regarding an employee's participation in the state insurance benefits program during a period of reduced hours or unpaid leave are discussed in a separate section below.

### Furloughs

A furlough is a specific type of unpaid leave. Current state law authorizes school districts, higher education institutions, counties and state agencies to institute a furlough program under certain conditions. For the purpose of the benefit plans administered by PEBA, any special rules for furloughs only apply to furlough programs that are established under, and meet the terms and conditions of, those state laws. Furloughs that do not fall under those provisions would be governed by the existing plan rules for unpaid leave as discussed above.

Under these furlough provisions, affected employees are entitled to continue to participate in the employee benefit plans administered by PEBA during the furlough. For the retirement plans, participating employers are required to pay both the member and employer contributions for employees during the furlough. For the insurance program, if the furlough would otherwise cause the

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<sup>1</sup> Employees who remain on payroll while using accrued sick or annual leave may generally continue their participation in the insurance and retirement plans without change during the period of paid leave.

employee to lose insurance coverage for a benefit that requires both employer and employee premiums, the employer is responsible for paying both the employer and employee premiums during the furlough. If the insurance benefit requires only employee premiums, the employee remains solely responsible for paying the premium for that benefit during the furlough.

Additional information about retirement contributions during an approved furlough and under additional furlough provisions under consideration by the General Assembly is discussed in a separate section below.

## **Layoffs**

Unlike a period of unpaid leave or a furlough, a layoff is generally a termination of the employment relationship and will end an employee's active participation in the employee benefit plans administered by PEBA. For general information on how a termination of employment affects an employee's benefits, including COBRA rights under the insurance program, please refer to Pages 72-75 of the [Benefits Administrator Manual](#) for insurance benefit questions and Pages 53-57 of the [Covered Employer Procedures Manual](#) for retirement benefit questions.

## **Insurance benefits and unpaid leave or reductions in hours**

Refer to Pages 57-60 of the [Benefits Administrator Manual](#).

### **Unpaid leave or reduction in hours**

#### **General leave policies**

PEBA does not dictate the employment status of an employee, only the coverage that is available to the employee through PEBA's programs. While on paid leave, an employee's eligibility for benefits continues, and the employer should pay the employer's share of any premiums during the paid leave.

This section describes how eligibility for insurance benefits is affected when an employee goes on an employer-approved leave of absence that is not associated with military leave or the Family and Medical Leave Act (FMLA). See the Unpaid leave quick reference on Page 186 of the [Benefits Administrator Manual](#) for more information.

#### **Employees with unpaid leave or reduction of hours**

Eligibility for insurance benefits depends upon two factors: the type of employee and how long the employee has been employed. Refer to Pages 31-34 and the ACA glossary on Page 184 of the [Benefits Administrator Manual](#) for more information.

#### **Ongoing employees**

Any employee who has worked with an employer for an entire Standard Measurement Period (October 4-October 3) is an ongoing employee. Eligibility for benefits is based on the number of hours the employee worked during the Standard Measurement Period.

If the employee averaged 30 hours per week during the Standard Measurement Period, he is in a Stability Period and a reduction in hours (even to zero) does not make the employee ineligible for benefits. As long as the employee remains employed with the employer, his eligibility for benefits continues for the remainder of the stability period (plan year).

Provide the employee with the [Your insurance benefits when your hours are reduced](#) document. The employee's benefits will continue, and the employee cannot cancel coverage unless one of the following occurs:

- The employee experiences a special eligibility situation such as a gain of other coverage. In this case, the benefits administrator should process the enrollment in EBS and submit supporting documentation.
- The employee intends to enroll in coverage through the Health Insurance Marketplace. In this case, the benefits administrator should terminate the employee's coverage in EBS as Reduction in Hours. Because the employee is voluntarily terminating coverage, neither the employee nor his covered dependents are eligible for COBRA. Once the employee cancels his active coverage, the employee may not re-enroll in benefits until the next open enrollment period, if eligible, or within 31 days of a special eligibility situation.

If the employee did not average 30 hours per week during the Standard Measurement Period, he is not in a Stability Period and a reduction in hours of less than 30 per week makes the employee ineligible for benefits.

Provide the employee with the [Your insurance benefits when your hours are reduced](#) document. Because the employee's hours have been reduced, the employee is no longer employed in a benefits-eligible position. Eligibility for benefits ends the first of the month following the reduction in hours. Provide the employee with the 18-month COBRA Notice and, if enrolled in life insurance, he will receive a conversion packet from MetLife. Terminate the employee's coverage in EBS as Left Employment. The effective date is the first of the month following the reduction of hours.

**New full-time employees (Not employed for an entire Standard Measurement Period prior to the reduction in hours)**

These employees are not in a Stability Period. A reduction in hours of less than 30 per week makes the employee ineligible for benefits.

Provide the employee with the [Your insurance benefits when your hours are reduced](#) document. Because the employee's hours have been reduced, the employee is no longer employed in a benefits-eligible position. Eligibility for benefits ends the first of the month following the reduction in hours. Provide the employee with the 18-month COBRA Notice and, if enrolled in life insurance, he will receive a conversion packet from MetLife. Terminate the employee's coverage in EBS as Left Employment. The effective date is the first of the month following the reduction in hours.

**Variable-hour, part-time or seasonal employees (Within an Initial Stability Period)**

If the employee averaged 30 hours per week during his Initial Measurement Period, he is in his Initial Stability Period and a reduction in hours (even to zero) does not make the employee ineligible for benefits. As long as the employee remains employed with his employer, the employee remains eligible for benefits through the end of his Initial Stability Period.

Provide the employee with the [Your insurance benefits when your hours are reduced](#) document. The employee's benefits will continue, and the employee cannot cancel coverage unless one of the following occurs:

- The employee experiences a special eligibility situation, such as a gain of other coverage. In this case, the benefits administrator should process the enrollment in EBS and submit supporting documentation.
- The employee intends to enroll in coverage through the Health Insurance Marketplace. In this case, the benefits administrator should terminate the employee's coverage in EBS.

Once the employee's Initial Stability Period ends, he becomes an ongoing employee and continued eligibility should be based on his hours worked during the Standard Measurement Period (October 4-October 3). Refer to the Ongoing Employees section on Page 57 of the [Benefits Administrator Manual](#).

### **Premiums while on unpaid leave**

Only employees who are within a stability period or employees who are absent from work due to FMLA or military leave may continue their coverage with their employer when their hours are reduced below 30 per week. All other employees lose eligibility for benefits when their hours are reduced below 30 hours per week, and these employees should be offered COBRA continuation coverage. Terminate the employee's coverage in EBS.

Eligible employees are only responsible for paying the employee's share of the premium while on unpaid leave. All premiums should be paid to the employer by the first of the month.

If an employee fails to pay his employer by the first of the month, the employer can cancel his coverage due to nonpayment by submitting an [Active Termination Form](#) to PEBA.

If an employer fails to submit an [Active Termination Form](#) to terminate coverage due to nonpayment within the month payment is due, coverage will be terminated the first of the month after request.

There is a 31-day grace period for employees to make payment and have coverage reinstated. If the employee makes payment before the end of the grace period, the benefits administrator can submit a *Request for Review* form to PEBA requesting the employee's coverage be reactivated, because the employee submitted payment within the payment grace period. Coverage will be reinstated retroactively to the termination date.

Cancellation due to nonpayment is not a COBRA qualifying event. No COBRA notice should be sent to the employee or his covered dependents. The employee may not re-enroll in benefits until the next open enrollment period, if eligible, or within 31 days of a special eligibility situation. Please note: Returning to work is not a special eligibility situation that allows an employee to re-enroll in benefits.

### **Life insurance and SLTD benefits while on unpaid leave**

- Life Insurance benefits end 12 months after last day worked. Complete an [Active Termination Form](#) to terminate employee's life coverage. Mark, as appropriate, Optional Life, Dependent Life-Spouse and/or Dependent Life-Child as the coverage to terminate and include the effective date.
- SLTD benefits will end 31 days after last day worked. Complete an [Active Termination Form](#) to terminate the employee's SLTD coverage. Mark Supplemental Long Term Disability as the coverage to terminate and include the effective date.

## Continuing MoneyPlus while on unpaid leave

If the employee remains eligible for benefits, and he decides to continue his MoneyPlus contributions to his spending accounts, he can only continue until the end of the calendar year in which he begins unpaid leave. There are three ways to manage an employee's spending account elections during unpaid leave.

### ***For employees of employers who use SCEIS for payroll***

*Employees who participate in a Medical Spending Account and/or Dependent Care Spending Account only have one option—catch up on contributions. If a furlough causes an employee to miss an entire paycheck, SCEIS will catch up the contributions when the employee begins receiving a payroll check again. If an employee participates in a Health Savings Account (HSA) and a furlough causes the employee to miss an entire paycheck, SCEIS will deduct the employee's normal HSA contribution when the employee begins receiving a payroll check again. There is no prepay or catch up on contributions option available for HSA contributions.*

1. **Prepay.** The employee is given the opportunity to prepay his contributions on a pretax basis. Arrangements for prepaying contributions are between the employer and the employee.
  - Health Savings Account — the same rules apply to contributions to the employee's HSA.
2. **Pay-as-you-go.** The employee is given the opportunity to pay with after-tax and/or pretax dollars (to the extent the employee receives compensation during leave).
  - Collect the contributions from the employee and include the money with the deposit covering the active employee contributions for any given payroll period.
  - The employer must send payroll funding and participant remittances to ASIFlex via ACH or mail to P.O. Box 6044 Columbia, MO 65205-6044.
  - Health Savings Account — Employees may also contribute directly to their HSAs through Central Bank on an after-tax basis. If they choose to do this, there is nothing for the employer to report.
3. **Catch-up.** The employee and the employer agree that the employer pays the contribution on the employee's behalf during leave, and the employee repays the employer upon return. Provisions for catch-up are between the employer and the employee. This must be decided prior to leave. PEBA assumes no liability for this option.
  - Health Savings Account — This option does not apply.

If the employee remains eligible for benefits, and he decides not to continue his MoneyPlus contributions:

- Respond to the discrepancy report from ASIFlex via the employer portal that the person is on unpaid leave and will not be continuing his contributions.
- Notify ASIFlex via the employer portal when the person returns from leave if his contributions will resume.

If the employee's unpaid leave makes him ineligible for benefits, refer to Pages 74-75 and Page 85 of the [Benefits Administrator Manual](#) regarding the procedures for terminating participation in MoneyPlus accounts.

## **Eligibility for retiree health insurance coverage**

Please note that even if an employee is able to continue active insurance coverage during a period of unpaid leave, the period of unpaid leave may constitute a break in active employment for the purposes of the eligibility requirements for retiree health insurance coverage. This may happen if the unpaid leave results in a gap in retirement service credit and the employee's absence from work is not due to the employee's medical condition or leave under the FMLA.

## **Retirement benefits and furlough contributions**

Refer to Pages 38-39 of the [Covered Employer Procedures Manual](#).

### **Existing state law provisions regarding furloughs**

State law authorizes school districts, higher education institutions, counties and state agencies to institute a furlough program under certain conditions. Under these furlough programs, the affected employees are entitled to continue participation in the retirement systems during the furlough and the employing agency, institution, school or county is responsible for making both employer and employee contributions to the retirement systems for the affected employees based upon the employees' pre-furlough rate of pay to maintain the accrual of benefits, including remitting applicable employer and employee contributions to participant accounts in the State Optional Retirement Program. Employers are not required to submit employee or employer contributions on retirees participating in a furlough.

Please note that the existing furlough provisions of state law only apply to furloughs established under the specific terms and conditions of those provisions and do not apply to any participating employers not specifically authorized to establish a furlough under those provisions, such as municipalities, hospitals, special purpose districts and other local political subdivisions.

### **Potential state law provisions regarding furloughs**

The continuing budget resolutions pending before the General Assembly contain provisions that would expand the furlough programs available to state agencies as a result of the coronavirus outbreak.<sup>2</sup> The terms and conditions of these proposed coronavirus-related furloughs would be subject to approval by the Department of Administration. PEBA has asked that the General Assembly also consider whether it would be appropriate to make comparable furlough provisions available to all participating employers in the South Carolina Retirement Systems.

Please note that these additional coronavirus-related furlough provisions have not yet been enacted, nor have the final terms and conditions been established for any furlough programs that may be adopted pursuant to those provisions, if and when enacted. Accordingly, PEBA cannot collect contributions under these proposed furlough provisions at this time. However, for planning purposes, if a participating employer anticipates that it will implement a coronavirus-related furlough at such time as they may become authorized by the General Assembly, the employer may wish to set aside funds to cover the retirement contributions and other benefit costs that would be required by the furlough provision.

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<sup>2</sup> See Section 5 of H. 3411 and Section 5 of H. 3485.

## **Service credit outside of an approved furlough**

Service credit in the defined benefit plans is based on the earnable compensation, contract length and months paid reported by employers for each employee. Even if an employee's reduction in compensation is not part of an approved furlough program under state law, the member will still be granted service credit for the time period if his earnings from covered employment continue to exceed the monthly service credit threshold.

Further, if a period of unpaid leave is not an approved furlough under state law, a member may still be able to purchase service credit for that period if it meets the statutory requirements for an approved leave of absence. As with any service purchase, the member must be an active, contributing member to make the purchase, and the employer can choose to pay some or all of the cost. While the service purchase will fill in a gap in service credit, it will not impact any reduction in the member's average final compensation, or AFC, that was caused by a period of unpaid leave.

## **Reporting furloughs**

Employers who wish to submit furlough supplements must first provide PEBA with a copy of their approved furlough policy. Once the policy has been confirmed by PEBA, employers can submit a furlough supplement electronically and must use the Upload Furlough Supplement Data option in EES. The data can be in Excel or text format. Additionally, employers may use a Supplemental Service Report (Form 1224) to report contributions and service for employees on an approved furlough. When reporting furlough service, contributions are to be based on the compensation the member would have earned had he been able to perform his normal job duties for the period in question. Form 1224 is submitted on a monthly basis. Do not cross fiscal year or quarter dates when completing the form.