BENEFITS DURING A LEAVE OF ABSENCE

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BACKGROUND

Unless a leave of absence is protected under federal law (e.g., the Family Medical Leave Act [FMLA] or the Uniformed Services Employment & Reemployment Rights Act [USERRA]) or a state leave law, at some point an employee out on a leave of absence will no longer be eligible for benefits under the employer's benefit plans. When that is depends on the language of the relevant plan documents and/or the employer's leave policies. Often, employers fail to have proper policies and procedures in place to handle benefit eligibility during a leave of absence and then find themselves in violation of various compliance requirements, and, more importantly, at risk of having to cover claims incurred by individuals who remain enrolled in coverage long after becoming ineligible.

Employers should determine ahead of time how benefit eligibility will be handled during a leave of absence to ensure consistency and manage expectations. Consideration should be given to why the leave of absence is needed and for how long. Beyond what is legally required, there is flexibility for the employer to be more generous and extend benefit eligibility further, but such policies should be documented and coordinated with the applicable carrier(s) where necessary.

LEAVE OF ABSENCE PRIOR TO MEDICAL COVERAGE BECOMING EFFECTIVE

Nondiscrimination rules under the Health Insurance Portability and Accountability Act (HIPAA) generally prohibit health plans from denying or delaying coverage based on whether the employee is actively at work at the time coverage would normally become effective due to a health factor. Under these rules, if the leave of absence is health-related, coverage should be made effective at the end of the waiting period; but then if the employee doesn't return to work and is not meeting the plan eligibility requirements, coverage could be terminated at the same time it would be for any other employee on an unprotected medical leave under the employer's standard leave policies. For example, if an employee elected coverage to be effective on May 1, 2024, and its standard leave policies indicate an employee on an unprotected leave loses eligibility after 30 days of leave, coverage should be available for May (so long as the employee makes the employee contribution), but coverage could then be terminated at the end of May if the employee has not returned to work under the standard leave policy.

Note that HIPAA requirements apply to group health plans, but not excepted benefits (e.g., stand-alone dental or vision and health FSAs) or non-health plans (e.g., life, disability). So, while group medical plans are not permitted to have actively at work provisions, other plans may have actively at work provisions that will not allow the employee to be enrolled in the plan until they return from leave. Check the plan documents to determine if these plans have an actively at work clause.

LEAVE OF ABSENCE FOR EMPLOYEE ALREADY ENROLLED IN BENEFITS

If an employee who is enrolled in benefits takes a leave of absence, continued eligibility for benefits during the leave will depend on three things:

1. whether the employee qualifies for protected leave (e.g., FMLA or USERRA);
2. the eligibility rules in the plan documents; and
3. the employer's leave policies.

If the employee is no longer eligible for benefits, the employer should terminate coverage and offer continuation coverage (if applicable) under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or state continuation laws. Continuing to offer active benefits to ineligible employees puts the employer at risk of having to provide claims coverage if the carrier (or stop-loss vendor) discovers the ineligibility and refuses to provide coverage. This is especially risky for medical and life insurance. In most cases, the steps illustrated on the following page should be followed.

Step One

Is the leave of absence legally protected (e.g. FMLA, USERRA, state leave law)?

Yes

If the employee is eligible for FMLA-protected leave, group health plan coverage must continue to be offered with the same employer/employee contributions for up to 12 weeks.

If the employee is eligible for USERRA-protected leave:

- Group health plan coverage must continue to be offered with the same employer/employee contributions if the leave is 30 days or less
- If the leave will be 31 days or more, coverage must be offered for up to 24 months, but the employee can be required to pay 102%

State leave law requirements vary

No

Step Two

Do the plan documents address eligibility during a leave of absence?

Yes

If plan documents contain specific language addressing eligibility during leave the plan documents will control. Check all plan documents, including wrap plan documents.

No

Step Three

Does the Employer Have Any Applicable Leave Policies in Place ?

Yes

If plan documents are silent, vague, or defer to employer, eligibility during leave determined by employers leave of absence policy, which should be applied uniformly to all types of leaves except where required otherwise by law.

No

Step Four

Terminate Coverage and Offer COBRA

If the employee does not qualify for protected leave (or it has been exhausted), the employee no longer meets the plan eligibility rules, and there is no applicable leave policy that would extend benefit eligibility, coverage should be terminated and COBRA (or state continuation) coverage should be offered as applicable

STEP 1. LEGALLY PROTECTED LEAVES

FMLA

If the employer is covered by the Family and Medical Leave Act (FMLA), the employee is eligible for FMLA leave, and the reason for leave qualifies as FMLA leave, the employee can continue their group health plan coverage for the 12-week duration of FMLA leave on the same terms and conditions as if they were actively working. Group health plan coverage includes medical, dental, vision, health reimbursement arrangements (HRAs), health flexible spending accounts (HFSAs), prescription drug plans, telehealth plans, etc. Alternatively, the employee can choose to discontinue their health coverage during the period of FMLA leave, but the option to reinstate coverage must be available at the end of the leave. In addition, if the employer's plans go through open enrollment, the employee would have open enrollment rights just like any other eligible employees.

Other non-health plan coverage (e.g., life, disability, etc.) can be terminated during the period of FMLA leave but must be made available again upon the employee's return to work. Many employers allow non-health coverage to continue during periods of FMLA leave; however, you should check the plan documents of such benefits to make sure they allow coverage to continue during the period of FMLA leave.

USERRA

For an employee taking military leave under USERRA of 30 days or less, health coverage (e.g., medical, dental, vision, HRA, HFSA, prescription drug, etc.) must be maintained as though the employee was actively at work. If the leave lasts longer than 30 days, the coverage can be terminated subject to the employee's right to elect a COBRA-like continuation benefit of up to 24 months (although very few employees take advantage of this continuation option as they and their families will almost always be covered by TRICARE during the period of military leave.)

For all other benefits, the employee must be treated the same as any other employee on a similar leave of absence. If the employer offers different types of leave with

different benefit options, the employer must follow its policy for the type of leave most similar to military leave. Any coverage that is cancelled during the military leave must be available for reinstatement as long as the employee returns to work within the time frames specified under USERRA.

STATE LEAVE LAWS

There are an increasing number of state leave laws (paid or unpaid) which also require an employer to maintain some or all benefits during certain types of protected leave. The requirements of these laws vary significantly in terms of what types of leaves are covered, whether they provide benefit protection during those leaves, which benefits are protected, and how much the employee must pay to maintain such benefits.

To the extent such state leave also qualifies as FMLA leave, the state leave and FMLA leave and the respective benefit protections under each law can run concurrently. However, there are circumstances where an employee may not be eligible for FMLA leave but is eligible for state leave; or where an employee has exhausted their FMLA leave but not their state leave; or the reason for leave is not covered by the FMLA, but is covered under state law; or the state leave law is simply more generous than the FMLA in terms of benefit protections. Employers must familiarize themselves with the state leave laws available in the state where the employee works and determine whether that law provides any benefit protections beyond those required by the FMLA or provided for in the employer's own leave of absence policies.

AMERICANS WITH DISABILITIES ACT (ADA)

If an employee cannot return to work for a health-related reason and the Americans with Disabilities Act (ADA) applies, an extended period of leave or reduced work schedule may have to be provided as a reasonable accommodation. That being the case, the ADA rules do not require ongoing benefit eligibility for an employee who is taking leave or working part-time as a reasonable accommodation unless the employer also provides coverage for other employees in the same leave or part-time status. In other words, an employee on an extended period of leave or reduced work

schedule under the ADA should be treated the same as any other employee working a reduced schedule or on leave under the terms of the applicable plan documents and the employer's standard leave of absence policies (see below).

WORKERS' COMPENSATION

There is no federal mandate requiring coverage continuation during workers' compensation; rather, workers' compensation benefits are regulated under state statute. However, many worker's comp absences will also qualify as FMLA leave in which case the FMLA benefit continuation rules would apply during the leave, at least until the FMLA leave is exhausted.

It's possible that some state worker's comp law may require benefits be maintained during a leave of absence caused by a work-related injury, but that is rare. Most worker's comp laws require an employer to treat an employee on worker's comp the same as a similarly situated employee who does not have a work-related injury. In other words, once FMLA leave is exhausted, if the employee with the work-related injury remains out on leave, the employer should treat them the same as they would any other employee on a period of non-FMLA leave under the terms of the applicable plan documents and employer's standard leave of absence policies (see below).

LONG-TERM & SHORT-TERM DISABILITY (LTD/STD)

Eligibility for disability benefits, by itself, will not typically require an employer to allow an employee to continue participation in other employer-sponsored benefits. However, STD will often run concurrently with FMLA and therefore group health plan eligibility (including dental, vision, HFSA, etc.) would be protected for the first 12 weeks. Likewise, STD benefits may run concurrently with state leave laws, in which case any benefit protection provisions in those laws will apply.

If the disability extends beyond the period of FMLA or state leave, the employer should treat the employee the same as it would any other employee on leave under the terms of the applicable plan document and the employer's standard leave policies (see below).

STEP 2. PLAN DOCUMENTS

In some cases, the plan documents will include specific language addressing how long an employee out on leave can remain on the benefit plan before coverage must be terminated and COBRA or state continuation coverage offered, where applicable. If the plan documents do contain such language, the plan document will control.

Common places to look in the plan documents for language addressing continued eligibility during a leave of absence include:

- Eligibility
- Termination / When Does Coverage End?
- Definitions (e.g., the definition of eligible employee)
- Continuation of Coverage / COBRA
- Leaves of absence

Be sure to check all plan documents for all benefits, including any wrap documents, as they may contain different language for different benefits. For example, it's much more common to find specific leave language in the plan documents for ancillary benefits, like life insurance or disability, than it is in health, dental, and vision plans.

Often the plan documents are vague, silent or even defer to the employer to determine eligibility when it comes to coverage during periods of leave. If that is the case, it falls on the employer to interpret those plan documents and determine continued eligibility for benefits in its own leave of absence policies (e.g., in the employee handbook).

STEP 3. EMPLOYER POLICIES

In the absence of any legal obligation or specific language in the plan documents, it falls on the employer to determine how long an employee on a non-protected leave can remain on the benefit plans. There are no bright lines as to how long that should be, although it should be a definite period of time, not open-ended, and should be applied consistently to all employees on all types of leave (non-FMLA medical or parental leave, worker's comp, ADA, LTD/STD, USERRA leaves longer than 30 days, etc.),

unless the law or plan documents dictate a different outcome.

FACTORS AN EMPLOYER MAY CONSIDER WHEN SETTING A LEAVE OF ABSENCE POLICY

Connection to overall leave policy. For example, if the employer generally only grants an additional 30 days of leave beyond FMLA, it probably makes more sense to allow benefits to continue for those extra 30 days of leave rather than terminating immediately at the end of the period of FMLA leave; whereas if the employer routinely permits several weeks or months of extended leave, terminating benefits at the end of FMLA makes more sense.

Corporate culture. Employers with a more paternalistic culture may be more inclined to allow benefits to continue longer while on leave.

Employee Relations / Recruiting & Retention. Are extended leaves where benefits are maintained important to the employer's recruiting and retention efforts? How do other employers in the area or industry with whom the employer competes for employees handle benefits during leave?

Costs. How much will it cost to continue benefits during a period of extended leave? Consideration should be given not only to direct costs, like employer premium contributions, but claims costs as well (e.g., an employee on an extended medical leave will likely continue to incur medical expenses during the leave which may drive up the plan's premiums over time).

COBRA and State Continuation. Keep in mind that allowing benefits to continue beyond what is required under federal or state protected leaves delays the start of any continuation rights that may be available under COBRA or state continuation. Related to the cost discussion above, employers may prefer to start the clock on any COBRA or state continuation available to the employee sooner rather than later. Rather than allowing active coverage to continue, an alternative option would be to help subsidize the cost of continuation coverage.

Impact of the ACA. If the employer is an Applicable Large Employer (ALE), the risk of Employer Shared Responsibility Penalties (ESRP) should be considered as well. If the employer uses the look-back measurement method to determine ACA full-time status, an employee out on leave will maintain their full-time status, and thus pose an ESRP risk, until their employment is terminated or at least through the end of the current stability period. Their ACA full-time status may continue into the next stability period as well if the leave occurs near the end of the current measurement period. If the employee's health coverage is terminated during the leave, and the employee waives the offer of COBRA coverage and instead goes to the Marketplace and qualifies for a premium subsidy on an individual policy, the employer will owe a §4980H(b) ESRP. That penalty risk may be acceptable to the employer and cheaper than maintaining coverage during extended leave, but it is still a potential cost that should be considered. If the employer does not want to incur any risk of an ESRP, the employee should be allowed to remain on the health plan until either their employment terminates, or they lose their ACA full-time status.

Ideally, the employer's policy regarding continued benefits during periods of non-protected leave is set in advance before an employee goes out on leave, both to ensure consistency and manage the expectations of the employees out on leave. If faced with a situation where the employer has an employee out on leave but has not previously established a policy, the employer should go ahead and set a policy now, but then consider whether it is reasonable or advisable to apply the new policy to an employee currently out on leave.

Typically, the employer's policy on continued benefits during leave would be documented in the employer's non-FMLA leave policies in the employee handbook. Incorporating the leave policy into any wrap document may also be a good idea. In some cases, it might also be possible to incorporate the leave policy into the actual plan documents, SPD or certificates, although that might not always be possible or even desirable.

PAYING FOR COVERAGE DURING A LEAVE OF ABSENCE

PAYMENT OPTIONS

If the leave of absence is paid, the employee contributions may continue to be deducted from payroll as normal.

If the leave of absence is unpaid or not being paid through payroll, e.g. STD or worker's compensation, it is advisable to have a process for obtaining the employee contribution and to communicate that process accordingly. FMLA rules provide that an employer can offer the following options to an employee on leave:

- Pre-pay on a pre-tax basis (this cannot be the sole option);
- Pay during the leave on an after-tax basis; or
- Make-up contributions on a pre-tax basis upon return from leave.

Prepaying is often not an option because there is not enough notice prior to the leave starting. For such situations, some employers prefer to require employees to pay in while on leave to preclude collection issues later, especially if the employee doesn't return. However, others are comfortable allowing the employee to make a catch-up contribution upon return from leave, which then allows for the contributions to be handled pre-tax. Allowing catch-up contributions does run the risk of the employee not returning from leave, which may make it very difficult to collect the premiums the employer covered during the leave. For this reason, especially for extended leaves of absence, it may be advisable to require the employee to make payments while out on leave.

If the leave of absence straddles plan years, prepayment for the entire leave is not an option. IRS guidance clearly prohibits prepaying for coverage on a pre-tax basis when the leave of absence straddles two plan years (Treas. Reg. §1.125-3, Q/A-5), so an employee could not prepay for coverage prior to going out on leave beyond the end of the current plan year. However, the same restriction does not appear to apply for catch-up contributions on a pre-tax basis following a leave of absence. In addition, it would not seem to violate the "no-deferred-compensation rule", which prohibits pre-

funding for a subsequent plan year. Therefore, it should be okay for an employer to collect any missed employee contributions on a tax-favored basis upon the employee's return to work, even if the leave of absence or missed contributions straddle plan years.

FAILURE TO PAY PREMIUMS (NON-PAYMENT)

FMLA LEAVE

FMLA requires that coverage cannot be canceled for nonpayment of premium unless two conditions are met: 1) The employee must be allowed a 30-day grace period from the date the premium is due. The due date for each premium payment should be clearly communicated in the initial FMLA paperwork or otherwise so it is clear when the grace period ends; and 2) No later than 15 days before the employer intends to cancel the coverage for nonpayment, the employer provides the employee a written notice that coverage will be cancelled retroactive back to the last day of coverage for which payment was received if payment is not received by the end of the grace period (or later if the notice is sent less than 15 days before the end of the grace period).

If coverage is cancelled for nonpayment of premiums during FMLA leave, the coverage must be available for reinstatement when the employee returns to work. If the employee does not return to work at the end of the FMLA leave, the employee must be offered COBRA, even if the coverage was cancelled for nonpayment of premium.

NON-FMLA LEAVE

For non-FMLA leave, employers have more flexibility with payment policies. The employer should still clearly communicate payment expectations, including method, due dates, and any grace periods or notifications that will be made available, but the employer is not specifically required to provide a grace period or notification prior to termination of coverage. That being the case, many employers may choose to follow whatever payment procedures are put in place for FMLA-protected leave for consistency and ease of administration.

CONSEQUENCES OF FAILING TO TERMINATE BENEFITS IN A TIMELY MANNER

When employees remain on leave for an extended period, employers may fail to terminate coverage when benefit eligibility ends as determined either by the plan documents or the employer's own leave policies. In some cases, the employer is simply trying to be generous, but regardless, doing so in this manner puts the employer in a risky position. The employer is better off terminating coverage once eligibility ends, offering COBRA, and then subsidizing the COBRA premiums if there is a desire to help the employee.

When coverage continues beyond the point at which plan eligibility ends, in addition to being at risk of incurring penalties for failure to comply with COBRA administration requirements, the employer is at risk of the carrier's (or stop-loss vendor's) refusing to provide claim coverage if it is discovered that the plan is covering ineligible individuals. Counsel should generally be involved in such situations. In any actions taken, communications made, or documentation created, the employer is potentially creating a string of evidence that could be used if claims arise.

We typically recommend that an offer of COBRA or state continuation coverage be made as soon as it is determined eligibility has ended. The federal COBRA rules allow the maximum COBRA period to run retroactively from the actual event date (e.g., the reduction of hours) or from the actual loss of coverage date, so the employer has a few options:

1. Offer COBRA beginning back when the actual loss of eligibility occurred.
    a. The employer could attempt to ask for full COBRA premiums (up to 102%) and terminate coverage retroactively if payment is not made (subject to carrier approval). This approach is the most aggressive and riskiest because the employer is at fault for not handling COBRA administration properly.

b. Alternatively, the employer could ask for full COBRA premiums only prospectively if the individual elects to continue coverage for the remainder of the maximum coverage period, and otherwise terminate coverage on a prospective basis.

2. Offer COBRA prospectively from the actual loss of coverage date for the maximum coverage period. However, before considering this option, the employer should check with the carrier (or stop-loss vendor). The carrier may not take responsibility for claims beyond the COBRA maximum coverage period based on the original event date.

Whatever the employer decides, the COBRA election letter should be tailored to address the situation, and the individual must be given the normal COBRA periods to make an election and payment. Regardless of how the employer chooses to proceed, there is some risk of the individual making claims against the employer for a failure to properly handle COBRA administration.

MEASURING HOURS OF SERVICE DURING A LEAVE OF ABSENCE

SPECIAL UNPAID LEAVE

For employers using the look-back measurement method, if the leave of absence is due to FMLA, USERRA, or jury duty (considered "special unpaid leave"), the employer must either exclude the leave of absence from the measurement period or impute hours of service during the leave using the average obtained during the remainder of the measurement period. There is no similar requirement for employers using the monthly measurement method; rather, if the leave is unpaid, no hours of service would be credited.

DISABILITY PAYMENTS

As set forth in IRS Notice 2015-87, "…[P]eriods during which an individual is not

performing services but is receiving payments due to short-term disability or long-term disability result in hours of service for any part of the period during which the recipient retains status as an employee of the employer, unless the payments are made from an arrangement to which the employer did not contribute directly or indirectly. For this purpose, a disability arrangement for which the employee paid with after-tax contributions (so that the benefits received under the arrangement are excluded from income under § 104(a)(3)) would be treated as an arrangement to which the employer did not contribute, and payments from the arrangement would not give rise to hours of service." Therefore, depending upon the structure of the disability benefit, it's possible that an employee may still be considered full-time while on unpaid leave collecting disability benefits.

WORKERS' COMPENSATION

Guidance indicates that "...Periods during which the employee is not performing services but is receiving payments in the form of workers compensation wage replacement benefits under a program provided by the state or local government do not result in hours of service."

BREAK IN SERVICE RULES

Under the break in service rules, an employee returning from a leave of absence of fewer than 13 weeks is generally considered a continuing employee, in which case the employer cannot impose a new waiting period or initial measurement period without a risk of penalty under §4980H. Whereas, an employee returning from a leave of absence of 13 weeks or more may be considered a new hire upon return to work and a new waiting period or initial measurement period may be imposed as applicable.

FLEXIBLE SPENDING ACCOUNTS (FSAs) DURING A LEAVE OF ABSENCE

HEALTH FSA

A health FSA is a group health plan that must continue to be offered during FMLA leave and perhaps during some state-protected leave. Beyond what is required under federal or state-protected leave, the employer's plan documents and/or leave policies will determine whether eligibility may continue while an employee is on leave. Assuming the employee is still eligible for the health FSA, the employee could choose to continue participating and make contributions while out on leave or make catch-up contributions upon return as permitted by the employer. If the employee chooses to continue participating, any unreimbursed qualifying medical expenses incurred while on leave would continue to be reimbursable. Alternatively, if the employee chooses not to continue participating, then expenses incurred during leave would not be reimbursable.

If coverage is discontinued while the employee is out on leave, the employee will forfeit any unused amounts unless the employee reinstates the health FSA upon return to an eligible position. Similarly, if the employee overused the health FSA prior to leave, the employer might have a loss and is not able to ask the employee to make up the difference.

Upon return to an eligible position, the employee may have an opportunity to re-elect health FSA coverage depending upon the employer's policy (opportunity to re-enroll is required following a protected leave). If the leave is less than 30 days, §125 rules appear to require the employee's previous election to be automatically reinstated. However, for a leave of 30 days or more, there is flexibility for the employer to determine how to handle the employee's re-enrollment. The employer should ideally document the chosen approach so that it can be communicated and applied uniformly to all similarly situated employees.

OPTIONS FOR HEALTH FSA ELECTIONS UPON RETURN FROM LEAVE

Many employers allow a new election upon the employee's return. The employee would have the option to waive the coverage or to make a new election for the remainder of the plan year. The new election would not have to reflect the previously elected amount so long as total contributions for the plan year don't exceed the annual contribution limit.

Alternatively, the employer could require reinstatement without an opportunity to waive coverage for the remainder of the plan year, or even if there is an opportunity to waive, require that employees who choose to re-enroll make an election tied to their previous election amount. If the employer wants to require reinstatement of the health FSA upon the employee's return, or limit what amount can be elected for employees who choose to re-enroll, that should be very clearly documented and communicated in advance. When the employer requires reinstatement of the previous election, the election amount for the remainder of the plan year will generally follow one of two potential methods:

- One option is to require the employee to make up the contribution difference (a slightly increased monthly contribution) over the remainder of the plan year. For example, assume the employee previously elected $1,200 for the plan year ($100/month), contributed $300 for January – March, and then was out on leave April – July and discontinued the health FSA while on leave. Upon return in August, if the employee wants to reinstate coverage, the employee could be required to contribute $180/month ($900/5 months) for the remainder of the plan year to still make total annual contributions of $1,200. Note that even though the employee is in some sense "making up" the contributions missed while out on leave, they are still not allowed to submit claims incurred during the leave while they were not participating in the health FSA.
- Another option is to reduce the annual election slightly to reflect the

same monthly contribution amount for the remainder of the plan year. So, using the same example above, upon return in August, the employee would contribute $100/month for August – December, and the annual contribution amount would be reduced to $800 ($400 less due to not contributing April – July).

DEPENDENT CARE ACCOUNT PLAN (DCAP)

A DCAP (also known as a dependent care FSA) is generally not subject to federal or state-protected leave, so the employer's plan documents and/or leave policies will determine whether eligibility may continue during an employee's leave of absence. Assuming the employee is still eligible according to the plan eligibility rules, the employee can choose to continue participating and make contributions while out on leave or make catch-up contributions upon return as permitted by the employer. However, even if the employee chooses to continue participating, expenses incurred during the leave for childcare will typically not be reimbursable because the employee and the employee's spouse must be actively working or looking for work, which is not the case for the employee who is out on leave. That being the case, the employee may choose to continue contributing to have the funds available later.

If coverage is discontinued while the employee is out on leave, the employee will forfeit any unused amounts unless the employee reinstates the DCAP upon return to an eligible position. Upon return to an eligible position, the employee may have an opportunity to re-elect DCAP coverage depending upon the employer's policy. As set forth above for health FSAs, if the leave is less than 30 days, §125 rules appear to require the employee's previous election to be automatically reinstated. However, for a leave of 30 days or more, there is flexibility for the employer to determine how to handle the employee's re-enrollment. It would be okay to automatically reinstate the employee's previous election by requiring the employee to make up the contribution difference over the remainder of the plan year or reducing the annual election slightly to reflect the same monthly contribution amount for the remainder of the plan year. However, if

the employer wants to require reinstatement of the DCAP upon the employee's return, that should be very clearly documented and communicated in advance. Alternatively, it would also be acceptable to allow the employee to make a new election so long as the combined elections don't exceed the annual reimbursement limit of $5,000 per calendar year.