



## When to Offer COBRA on a Flexible Spending Account (FSA)

### ***Do I have to offer my employees COBRA on their FSA?***

It depends. There are three circumstances where an employer would NOT have to offer COBRA on an FSA:

- FSAs maintained by a group with less than 20 employees;
- FSAs maintained by a church or government or;
- FSAs offered as an "excepted" benefit where the individual's FSA is "overspent".

Once you determine that you are a non-church and non-governmental group who has 20 or more employees, you'll need to examine your FSA to see if it is considered an "excepted" benefit.

### ***When is an FSA considered an "excepted" benefit?***

An FSA is an excepted benefit if it meets the following three requirements:

- The maximum annual FSA benefit must not exceed 2x's times the employee's annual FSA election plus \$500. Put simply, FSAs funded exclusively by employee contributions will, by definition, satisfy this condition.
- Employees participating in the FSA must **also** be eligible for coverage under a group's health plan. If eligibility requirements are different for FSAs and medical plans, a group would fail this condition. For example, if your company allows an employee who works 30+ hours per week to participate in the FSA, but only employees who work 40+ hours per week can participate in the medical plan, you will fail this condition.
- The maximum COBRA premium must equal or exceed the maximum benefit amount under the FSA. In general, a normal FSA operating under a cafeteria plan will meet this condition, as the annual COBRA premium will be the maximum benefit amount plus 2%.

If you can check-off each of these conditions, you can limit COBRA coverage on your FSA. There are two ways in which COBRA is limited or scaled down from regular COBRA coverage. If you do not meet the above three criteria, regular COBRA rules will apply to your FSA (including the 18, 29 or 36 month timeframe and open enrollment rights).

### ***What is a "limited offering" under COBRA?***

The limited offering on an excepted FSA involves two components:

1. COBRA runs only through the remainder of the **plan year**, not for the regular 18, 29 or 36 month COBRA period.
2. COBRA does not need to be offered at all if the FSA account is "overspent".

Once you've determined that your FSA plan is excepted, your last step is to

calculate if *each individual FSA account* is under or overspent when the COBRA-qualifying event occurs.

***How can you tell if an FSA account is under or overspent?***

An employee has an "underspent" FSA account if the employee's annual election amount, reduced by reimbursements up to the time of the qualifying event, is greater than the premiums for FSA COBRA coverage they would pay for the remainder of the year.

For example, the employee's annual election is \$1,200 or \$100 per month (assume the plan year runs January through December). This employee terminates at the end of June by which time she has received reimbursements for \$400 worth of claims. Her remaining FSA balance is \$800 (\$1,200 annual election - \$400 in claims) which is greater than her COBRA premium of \$612 (\$100 per month for July- December x 2% COBRA surcharge). This employee's FSA is underspent. COBRA must be offered, but only for the remainder of the plan year (July-December).

If this employee had submitted claims for \$800 prior to termination, her remaining FSA balance would be \$400 which is less than the \$612 annual premium. This account would then be overspent and COBRA would NOT need to be offered.

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