

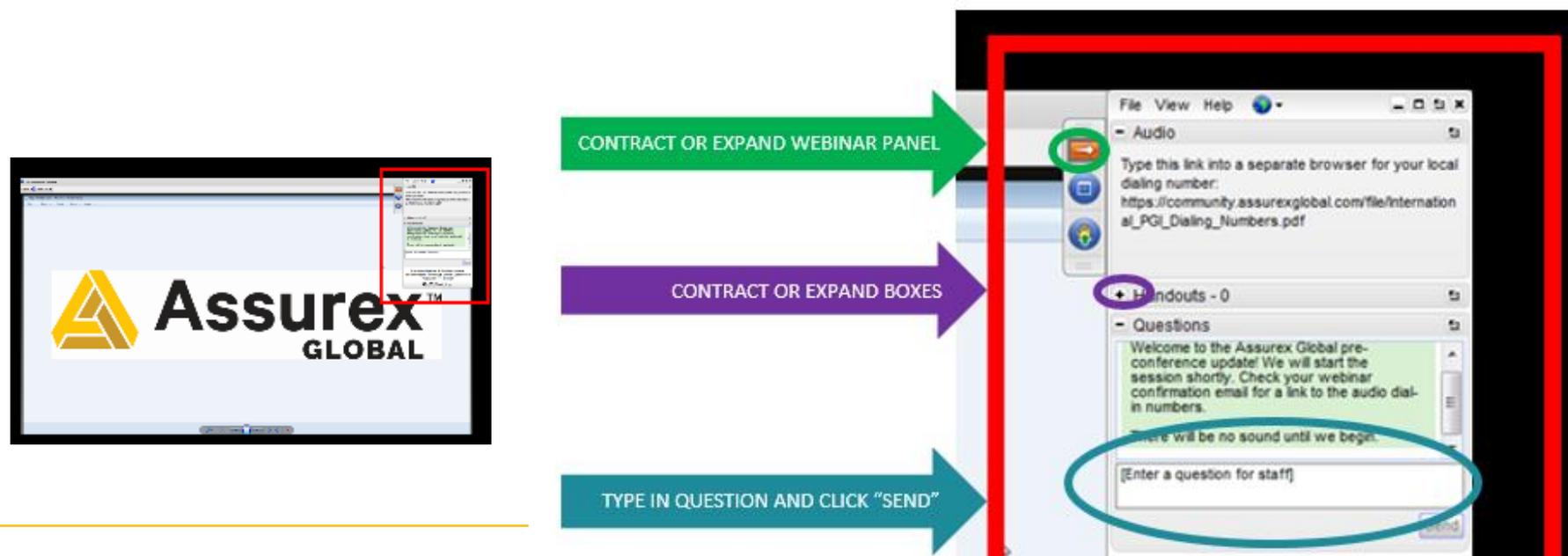
2020

Benefits During Breaks-in-Service, Leaves, and Rehire Issues

Presented by Benefit Comply

Benefits During Breaks-in-Service, Leaves, and Rehire Issues

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



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Agenda

- Leaves of Absence
 - Eligibility
 - Employer Contributions
 - Employee Contributions
- Return to Work

Definitions

Leave of Absence

- Period of time during which employee is not working, but is still employed
- Could be paid or unpaid

Break in Service

- Period of time during which there are no hours of service (no pay)
- Could include a leave of absence or termination of employment and then rehire

Furlough

- Time of reduced hours or no hours, but generally employment is not terminated

Lay-Off

- Termination of employment

FMLA-Protected Leave

- Unpaid leave (generally for 12 weeks) for the birth of a child/adoption, or for a serious health condition of the employee or a family member
- Expanded: Paid leave after 2 weeks to care for a child due to school or daycare closure

Emergency Paid Sick Leave

- Up to 2 weeks (or 80 hours) of paid leave for COVID-19 symptoms, employee or another individual being advised to isolate or quarantine, or to care for a child due to school or daycare closure

Leave of Absence

Leave of Absence – Eligibility

FMLA-Protected Leave

- Does employee qualify for FMLA-protected leave? If yes, eligibility continues for up to 12 weeks

Plan Eligibility Rules

- Does employee still meet the plan eligibility rules (e.g. stability period)?

Employer Leave Policy

- Does employer offer a leave policy for the employee's circumstances, and if so, is benefit eligibility extended?

Terminate Coverage & Offer Continuation Coverage

Leave of Absence – Eligibility

- COVID-19 Considerations
 - Emergency Paid Sick Leave
 - Eligible during the 2 weeks of paid leave
 - Expanded FMLA
 - Eligible for up to 12 weeks
 - Furloughs and Temporary Lay-Offs
 - Many employers coordinated with carriers (or stop-loss vendors) to allow continued eligibility

Leave of Absence – Eligibility Examples

Employee is out on FMLA-protected leave, during which time he maintains benefits. Employee does not return to work at the end of 12 weeks and is collecting short-term disability.

- Can employer terminate coverage and offer COBRA? If so, when?
- Can employer continue offering active coverage?
- What if employee qualified as full-time for the stability period?

Employer has <300 employees. Employee is self-quarantining due to concern of contracting COVID-19, without the advice of a health care provider. Employee cannot work from home.

- Can employer terminate coverage and offer COBRA? If so, when?

Leave of Absence – Employer Contributions

FMLA-Protected Leave

Must match what is provided for active employees

Emergency Paid Sick Leave

Must match what is provided for active employees

Stability Period (Look-Back)

May adjust or discontinue contributions, but must be “affordable”

Leave or Furlough

May adjust or discontinue contributions

Leave of Absence – Employee Contributions

- Paid Leave
 - Continue salary reductions
- Unpaid Leave
 - Option 1: Collect contributions during leave on an after-tax basis
 - Option 2: Allow catch-up contributions on a pre-tax basis upon return
- Payment Policy
 - Develop a policy (e.g. payment method, time frames, consequences for non-compliance)
 - Communicate the policy
 - Terminate coverage for nonpayment

Leave of Absence – Contribution Examples

Employer furloughs employees in November and continues to charge the normal active premium for coverage. Employees return to work in February.

- What options does employer have to collect premiums from employees?
- What if employees do not return to work?

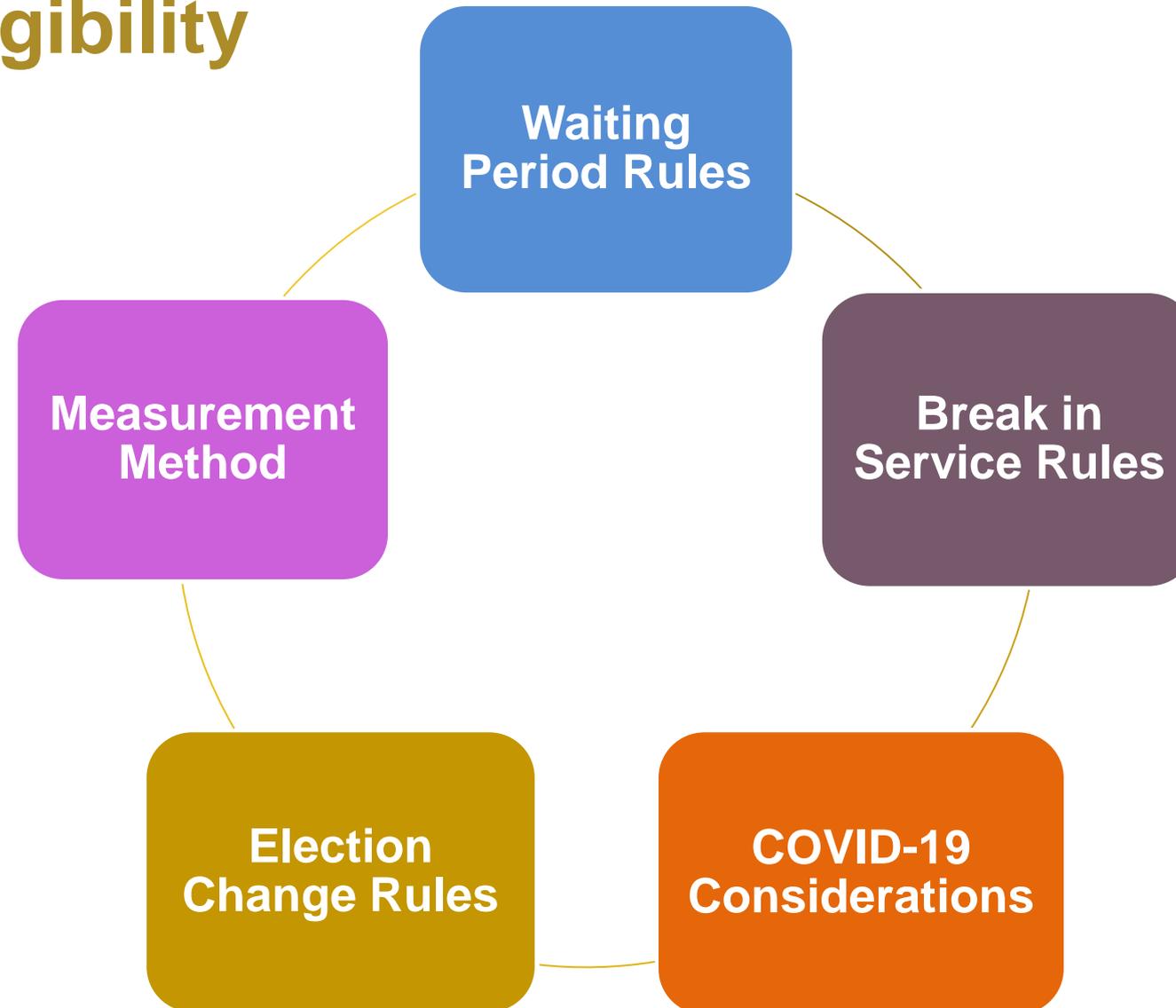
ALE (50+ FTEs) – Employee qualifies as full-time for the stability period, and then goes on an unpaid leave of absence during the stability period.

- Can employer charge employee the COBRA premium?

Leave of Absence Policy - POLL

Return to Work

Return to Work - Eligibility



Return to Work - Eligibility

- **Waiting Period Rules**
 - Applicable to large and small employers
 - Waiting period cannot exceed 90 calendar days
 - Permitted to impose a new waiting period each time an individual is eligible
 - Some plans waive or shorten the waiting period for rehires
- **Election Change Rules**
 - Mid-year election changes permitted when change in employment status affects plan eligibility
- **COVID-19 Considerations**
 - Paid leave under the FFCRA (i.e. Emergency Paid Sick Leave or Expanded FMLA)
 - Extended benefit eligibility
 - Additional special enrollment opportunities
 - Flexibility with election changes

Return to Work - Eligibility

Measurement Method

- Monthly measurement method
 - Employees are full-time in any month in which hours of service are 130+
- Look-back measurement method
 - Eligibility during the stability period depends upon average hours during previous measurement period
 - Leave of absence may impact eligibility for next plan year
 - Special unpaid leave rules (i.e. FMLA, USERRA, jury duty)

Break in Service Rules*

- <13 weeks → continuing employee
 - Offer coverage by 1st of the month following return for those enrolled prior to the break
- ≥13 weeks → new hire
 - May impose a new waiting period or initial measurement period

**Break in service rules are 26 weeks for educational organizations*

Return to Work – Eligibility Examples

Small Employer (<50 FTEs) – Employee is terminated from employment, so benefits are terminated and COBRA (or state) continuation coverage is offered. Employee is then rehired 4 months later.

- Upon returning to a full-time position, when must coverage be offered?

ALE (50+ FTEs) – Employee has a break in service for 10 weeks, so coverage is terminated due to the reduction in hours and COBRA continuation coverage is offered. After 10 weeks, employee begins working full-time hours again.

- When must coverage be offered?
- What if employee previously waived coverage?

Return to Work – Eligibility Examples

ALE (50+ FTEs) – Employee has a break in service for 16 weeks, so coverage is terminated and COBRA continuation coverage is offered. After 16 weeks, employee begins working full-time hours again.

- When must coverage be offered?
- What if employee previously waived coverage?

ALE (50+ FTEs) Look-Back Measurement Method – Employee is on a leave of absence or furloughed for 8 weeks. Employee is treated as full-time for the entire plan year, even during the break in service, but will not have enough hours to be considered full-time next year.

- Does employer have to offer coverage again at open enrollment?

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