Flexible Spending Accounts (FSA), Health Reimbursement Accounts (HRA) & Health Savings Accounts (HSA) and Layoffs/Furloughs

As with most of health care and provisions related to the IRC, there are many variables to consider. Couple that with the fact that, in ordinary circumstances, layoffs and furloughs are treated differently. With that said, below is some guidance to consider when discussing layoffs and/or furloughs and the continuation of health savings/spending accounts during the COVID-19 pandemic.

First and foremost, FSA, HRA and HSA plans are governed by the established Plan Document and Summary Plan Description (SPD) which outlines plan provisions including continuation if an employee is terminated (by normal definition would include layoffs).

FSA's under normal circumstances and layoffs:

Generally, a health FSA is considered an ERISA-covered health plan, and unless an exception applies, an employer subject to COBRA provisions must offer COBRA continuation coverage due to a qualifying event for up to 18 months (technically the remainder of the plan year as FSA's are limited). Employees who elect COBRA continuation coverage may only make after-tax contributions to the FSA account once they are no longer receiving a paycheck, but will have access to FSA funds. In addition, employers may require a qualified beneficiary to pay an additional 2% administrative fee. If an employee does not elect COBRA upon termination, he or she cannot access the FSA funds once terminated (except for claims incurred prior to terminations date), and any balances are forfeited.

FSA's under normal circumstances and furloughs:

Payroll deductions through FSA's should be stopped for furloughed employees. This will not terminate their FSA, the employees will continue to be enrolled in their health care FSA, but will not be able to get reimbursed for any claims incurred as long as they have a "non-pay" status. Guidelines say that employees will resume reimbursements once they return to pay status and allocations will restart. Any missed deductions from paychecks would be made-up and recalculated over remaining pay periods to recoup the remaining annual FSA election.

One strategy would be for an employer to suspend FSA access to a laid off or furloughed employee during the non-pay status for any claims incurred during the non-pay status, and simply resume access when they return to the payroll and resume employee FSA contributions on a pro rata basis. For more liberal employers, perhaps they allow for continued reimbursement of FSA funds during the layoff or furlough period, and hope employees return in the near future to complete their remaining FSA contributions. FYI – If the employee(s) return after the FSA plan year, an employer may not have the ability to recoup for the previous plan year's contributions.