

# COVID-19 and How it Effects Insurance Rebates

A “premium holiday” is when the carrier does not send money but simply gives the employer a “premium holiday.” This means the employer does not have to send the premium, or may send a reduced premium, for a month or more. Here, if the employer is receiving a premium break, it should share that break with the employees and COBRA participants to the extent they shared in the cost of the coverage. It can determine what portion to share based on the same principles outlined below for rebates.

How you handle a rebate or premium holiday depends on whether part of the premium is paid with “plan assets.” Plan assets are that portion (if any) of the money used for paying plan premiums or benefits that must be handled according to special fiduciary rules. This means they must be used for the benefit of plan participants. For an employer’s plan, the most typical example of plan assets is employee contributions.

Below, you will find three options the DOL has provided with the “plan asset” portion of the rebate in the context of MLR:

1. Pay it to participants
2. Give participants a premium holiday or reduction in the current year
3. Use the funds for plan enhancement activities

*How do you determine whether part of the premium was paid with plan assets?*

**Step 1.** Look to the plan documents and insurance contracts. Do they address what portion of the rebate is plan assets? Federal benefits law, known as ERISA, requires the employer to follow the terms of the plan. Therefore, if the plan or policy addresses whether the employer owns the rebates, the fiduciary should follow the plan. However, in many cases, the plan or policy is silent on the treatment of rebates.

**Step 2.** If the plan or policy is silent, look at how the premiums were paid

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If an employee paid for the health insurance coverage on a pre-tax basis through a cafeteria plan, then the rebate will be taxable to them. In other words, if the deduction for the health insurance was taken on a pre-tax basis, the rebate is taxable. On the other hand, if original health insurance deduction was after-tax, the rebate would not be taxable.

If the rebate is used to fund a premium holiday for employees, and the employee is paying for the health insurance on a pre-tax basis, then the employee's taxable income will naturally increase by the amount of the holiday. For example, assume an employee is paying \$400/month on a pre-tax basis. The employer gets a rebate and reduces the premium for one month by \$150. The employee will only pay \$250 that month, which means the employee will naturally have \$150 of additional taxable income.

If the rebate is used for plan enhancement activities, those additional plan enhancements should generally not be taxable.

Once a plan fiduciary has done a full analysis of the MLR Rebate/premium refund, the fiduciary must allocate the funds among the plan participants.

There are three factors The DOL permits the plan fiduciary to weigh when allocating which include the costs to the plan of distributing the rebate, the ultimate plan benefit of distributing the rebate, and the competing interests of groups of participants.

Typically, the plan asset portion of a rebate received under a particular policy should be paid to participants on that policy. For example, if an employer receives a rebate on the HMO option under its plan, it should be used to benefit employees in that HMO option. This also means that rebates from different policies should not be pooled together and then distributed. Each policy should be treated separately.

Rebates issued to a specific policy should not be used to benefit participants of a different plan. For example, a rebate from the health plan should not be used to reduce premiums in the employer's disability plan.