

# Reinstatement Based on Grievance Reversal

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## **What is the health benefits status of an employee who is reinstated based on the grievance process?**

Terminated employees who are reinstated with pay retroactively to their termination date based on results of the grievance process should be made whole regarding their health benefits status, effectively eliminating the consequence of the erroneous termination. This means that the plan and membership level that were in place at the time of termination should be reinstated. Restoration of the elected health plan coverage should not be a choice for the employee since there is no longer a termination of employment that would have allowed for the coverage to end. The correction/reinstatement is not an event that is consistent with changing membership, adding optional coverage or changing plans, and allowing an election change without a permitted election change event is in violation of the irrevocability rule. This restoration of benefits is also in compliance with 1VAC55-20-410 which states that:

“Employees who are terminated and file a grievance shall be treated as terminated employees and may elect extended coverage or nongroup coverage. In the event such an employee is reinstated with back pay, previous health and flexible spending account elections will be reinstated retroactively. Appropriate contributions must be made to cover the period.”

## **Are any changes allowed during the period following the reinstatement?**

Based on the goal of placing the employee in a position that is as close as possible to the position he or she would have been in had the erroneous termination not occurred, changes during the retroactive reinstatement period should be limited to those options that the employee could reasonably have chosen with a timely election had the termination not occurred. This could include changes that are consistent with open enrollment or qualifying midyear events.

## **What is the premium obligation of the reinstated employee and his/her employer?**

Premiums must be paid for any months of reinstatement. It is the responsibility of the employing agency to collect the employee's pre-tax contribution for those months. Every effort should be made to collect their pre-tax contribution as a part of retroactive payment of wages. Allowing the employee to pay the premium by check should be avoided since it results in loss of pre-tax savings.

There is no clear guidance available from the IRS to address collecting retroactive premiums that cross tax years. However, informal comment from the IRS indicates that if an employer discovers late in the year that pre-tax salary reductions were underwithheld, the employer can withhold the amounts on a pre-

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tax basis in the following year to correct the mistake. (It is noted that the participant's Form W-2s for both the year of the error and the year of the correction will not match the participant's cafeteria plan elections.)

If the employee has been covered under COBRA or any other state program during the termination period and retroactive coverage is established per the above guidance, the employee's status must be corrected in BES. Any premiums paid for other state program coverage will be refunded.

Any cost incurred for coverage outside of the state program during the termination period is an issue that should be addressed separately. However, claims during a retroactive period of reinstatement can be filed for consideration and appropriate coordination of benefits.