

Best practices for administering benefits during a leave of absence

Thursday, October 05, 2017 - Heather Kaiser

When an employee takes a leave of absence, many employers struggle to determine the impact the leave will have on employee benefits. Must the employee's benefits continue? Which ones? Who pays? While some employee benefits have mandatory requirements under certain leave laws, many do not. Leave of absence benefit eligibility and administration is something best to consider early and apply consistently.

Most statutory leave laws focus on continuation of medical benefits, but some also address non-medical benefits, such as accrual of seniority, ancillary benefits, or paid leave. During a leave of absence, whether or not you have to continue to provide employees with benefits will depend on what the law might require, your medical and other plan documents, and your policies and practices. This article focuses only on medical insurance eligibility. [Register](#) for our upcoming webinar "Employee benefits on leave" for an in-depth discussion on a variety of employee benefits while on leave.



Know the state and federal laws

The two biggest issues that arise are medical insurance and related benefits eligibility and payment issues. The first question with continuation of medical insurance is to determine if the law mandates the outcome of medical coverage eligibility. For example, here are a few statutory considerations:

- **Family and Medical Leave Act (FMLA)** — employers must maintain group health insurance coverage on the same terms as if the employee continued to work, including employer-paid premiums.
- **Minnesota Parenting Leave Act** — employers must continue to make coverage available to the employee while on leave under any health plan, but they are not required to pay the costs of the insurance.
- **Wisconsin Family and Medical Leave Act (WFMLA)** — employers must continue to make coverage available to the employee while on leave under any health plan as it existed prior to leave, including employer-paid premiums.
- **Workers' compensation** — no mandate unless FMLA also applies.
- **Uniformed Services Employment and Reemployment Rights Act (USERRA)** — employers must continue to make coverage available to employees on leave if the leave is for less than 30 days.
- **Americans with Disabilities Act (ADA)** — no mandate.

You will want to pay attention to the details of each law you are considering when extending coverage. There are often additional regulations related to payments and collections of premiums.

Know your plan document

If the law doesn't mandate eligibility for your particular situation, the next question is whether your plan document mandates eligibility. In many cases, the plan document will not address eligibility on leave, or it will be vague on the subject. We also see instances where plan documents and statutory requirements are inconsistent. If, for example, the plan states that employees remain eligible for six months during a medical leave, you will have to follow your plan. This means you cannot terminate coverage after the employee exhausts FMLA leave but remains on leave, say under a personal leave, but you also cannot extend coverage if the employee takes more than six months of leave.

If the employee is not eligible under your plan, they may need to be offered COBRA or USERRA continuation coverage if they are gone from work long enough. If so, the employee will have to formally elect continuation in order to stay on the applicable insurance plans. If the employee loses coverage or elected COBRA during his or her leave, you generally must reinstate them as an active participant upon their return from leave, according to the terms of your plan.

When your own judgement is required

If your plan is silent or ambiguous, it is up to you to determine if the employee will continue to be eligible for coverage, if the employee is responsible for any or all of the insurance premiums, and how they will be required to make regular payments in order to continue the coverage. It's important to be consistent and not contradict whatever language does exist in the plan. If this is the case, you may want to consider adding a policy officially explaining how you intend to interpret the plan.

There are many different options for interpreting ambiguous plan provisions regarding eligibility during leave, such as:

- Coverage ends as soon as the leave begins
- Coverage ends after some fixed period of leave
- Coverage ends when the leave changes from paid to unpaid.

Also, if you are an Applicable Large Employer subject to the Affordable Care Act (ACA) "play or pay" penalties, your ACA strategy will often come into play. An employee who is full-time under the ACA (ACA-FT) will typically continue to be ACA-FT while out on leave and therefore pose a penalty risk if you terminate their health insurance coverage during the leave.

The employee is eligible — now what?

Once you determine that benefits are continued, you next have the administrative task of determining what amounts to charge and how to collect payment. Logistically, you will want to pre-determine how much you can charge an employee and how to collect so that it is implemented consistently. Without statutory or plan requirements, you can generally charge the employee for the full amount of premium, as long you don't discriminate.

Once you determine what premiums (or portion thereof) your employees will be paying while on leave, payment of any premiums during the leave can be handled in a number of ways. If during any part of the employee's leave they use paid time off, you may continue to make normal payroll deductions to collect the employee's share of the premiums. However, at the point where the employee's leave becomes unpaid (e.g., the employee uses up available PTO), you can require the employee to submit monthly payments to the company during the leave. Some employers also impose penalties for non-payment, such as terminating health and other coverage for the remainder of the leave where allowed by law.

To the extent benefits are mandated, there are usually special considerations in terms of administration. For example, under the FMLA, the employee must continue to make any normal contributions to the cost of the health insurance premiums. If the employee's premium payment is more than 30 days late, the employee's coverage may be dropped unless you have a policy of allowing a longer grace period. You must provide written notice to the employee that the payment has not been received and allow at least 15 days after the date of the letter before coverage stops.

Also keep in mind that even if an employee is eligible for continuation of coverage by statute, or under your plan or policy, benefits may cease independently when an employee ceases to be eligible under the terms, conditions, and limitations of the applicable law or plans.

Because these issues are not black and white, it is best for employers to know their obligations and strategy, hopefully ahead of time. The biggest issue we see is that employers have not thought through what they want and nothing is in writing. In the upcoming [webinar](#) "Employee benefits on leave," HR Consultant David Flotten will describe numerous considerations with employee benefits while employees are on leave, as well as practical and compliance considerations. Perhaps most importantly, he will discuss points to help employers analyze and determine what is best for their company. If you have questions about employee leave or other HR issues, please [contact us](#).