

Benefits during leave: A methodical approach for school districts

Tuesday, November 13, 2018 - David Flotten, JD, SPHR

The most common questions we get on the HR Hotline relate to employees' leaves of absence. And a large percentage of those questions have to do with employee benefits during that leave:

- Can the employee maintain benefits during the leave and, if so, for how long?
- What happens to those benefits that are not maintained during leave?
- How does an employee pay their share of premiums while out on leave?
- What happens to those benefits when the employee returns to work?



Part of the reason this is such a tricky topic is because the answer to these questions can come from different places: statutes and regulations in the case of legally protected leaves, and school district policy and practice. Moreover, not all of these sources give the same answer — school district policy may say one thing but what happens if the plan document says something else? Or what happens if the law, the plan documents, and school district policy are all silent or ambiguous as to how a particular benefit is handled during leave?

A methodical approach

To help sort through this thicket, we recommend a methodical, three-step approach when it comes to analyzing benefits during a leave of absence:

1. Check the law
2. Check the plan documents
3. Check your policies

You may have to go through these steps multiple times for different benefits or even for different aspects of the issue for a single benefit. For example, the law may tell you what happens to an employee's health insurance during a legally protected leave but say nothing about the employee's life or disability coverage, which would be controlled by those plan documents. Or the law may require that a particular benefit be continued during the leave but have no specific rules about how the employee pays for that benefit so your organization's policies will control.

If you get all the way through these steps and still don't have an answer, then that's a signal that it's time to come up with a policy that you can apply consistently going forward. A uniform policy that applies to all leaves will help avoid potential discrimination and retaliation claims. Also, a lot of legal disputes that arise from a leave of absence can be avoided if the employee has a clear understanding up front how their benefits will be handled and are not caught off guard when they assume one thing but you do something else.

Example

Let's assume you have an employee, Pat, who goes out on a medical leave of absence. Pat is FMLA-eligible but needs an additional four weeks of leave on top of the 12 weeks of FMLA leave, which you approve. Pat is enrolled on your health, dental, life, and short-term and long-term disability (STD/LTD) policies, all of which require a contribution by the employee.

Check the law

The FMLA requires that you maintain Pat's health and dental insurance for the duration of the FMLA leave at the same cost as though Pat was still working. The FMLA also has rules about how employees pay their share of the premiums for those benefits. For example, you can offer, but not require, Pat prepay the premiums prior to the leave. There are also specific grace period and notice requirements if you intend to cancel Pat's coverage during the leave for failure to pay premiums.

However, the FMLA does not address continuation of Pat's life and STD/LTD benefits nor does it address what happens to Pat's health and dental coverage during the 4-week period of non-FMLA leave. And while the FMLA would address restoration of Pat's benefits if they return to work within the 12 week FMLA period, again, it does not address restoration of those benefits after the period of extended non-FMLA leave. For those issues we have to...

Check the plan documents

In this example, it turns out your health and dental plan documents state that an employee remains eligible for coverage as long as the employee is a full-time employee under the ACA look-back measurement rules (ACA-FT). In all likelihood, Pat will continue to be ACA-FT during the period of extended non-FMLA leave and thus remains eligible for health and dental coverage during that time period as well. So while the FMLA would permit you to cancel Pat's health and dental coverage at the end of the 12 week period of FMLA leave, your plan documents do not.

By contrast, your life and STD/LTD plan documents allow those benefits to continue during a period of medical leave of up to 12 weeks. That means you will need to terminate Pat's life and STD/LTD coverage during the 4-week period of extended non-FMLA leave. Those policies may have a continuation or portability provision which allows Pat to maintain that coverage at their own expense during this time period or the coverage may simply come to an end. Finally, it turns out the life and STD/LTD policies have a rehire clause which allows an employee who returns to work within 60 days of losing coverage to immediately jump back on to the plan without going through the normal waiting period.

But none of the plan documents address how the employee pays their share of the premiums during leave which means we need to . . .

Check your policies

In this example, your leave of absence policy provides that as long as the employee is using paid leave (e.g. PTO), premiums will be deducted as normal. But for periods of leave where the employee is not receiving compensation through payroll, the employee must write a check (which will be after-tax) and deliver it to your payroll department by the first day of each month while out on leave. The policy allows for a 30 day grace period during the period of FMLA leave before coverage will be cancelled for failure to pay premiums. But for periods of non-FMLA leave, no grace period is offered and coverage will be cancelled if the premium payment is not paid by the due date.

For more information about leave issues or employee benefits in general, please [contact us](#).