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*Julie assists with a variety of compliance issues related to employee benefits and the ACA, ERISA and other federal and state regulations.*

## Employee Benefits – Question of the Month

August 2019

**Q:** We have an employee who has been out on Maternity Leave for six weeks and has six weeks of leave left. She has asked to come back on a half-time schedule for the remainder of her leave (resulting in 12 weeks on a reduced work schedule), then return to work full-time. My concern is that because part-time employees do not receive benefits, this could affect her benefits eligibility and force us to drop her coverage. What do you recommend?

**A:** The first question in this situation is whether the employee is on leave that is protected by the Family and Medical Leave Act (FMLA) or similar state law.

If she is on FMLA, you can maintain her benefits even when she's working a reduced schedule. (However, note that you aren't required to allow an employee to work a reduced or intermittent schedule after childbirth during the portion of FMLA leave that is solely for "bonding" purposes. If you do allow her to return to work on a reduced schedule, it would be best to have something in your FMLA policy that explains the criteria for when this type of arrangement is or is not allowed and the process for requesting/approving it.)

If the employee is not on FMLA leave – either because you aren't subject to the law or she doesn't qualify – then it's trickier and will depend on the terms of coverage with your carriers and other factors. If any of your benefits are self-insured, that gives you more flexibility in deciding how to handle eligibility in situations such as these. For health benefits, it may depend on whether you use a lookback measurement process and whether the employee is in a "stability period." (If you have 50 or more full-time employees and don't know those terms, call me!)

In any event, you should have a written policy and/or incorporate provisions in your plan documents and/or wrap document regarding benefits eligibility during extended periods of leave. We can help by reviewing your insurance certificates and plan documents, as well as contacting your carriers, to determine your options in this specific situation.

Feel free to contact me if you have any additional questions at [juliea@millercares.com](mailto:juliea@millercares.com).

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