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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

February 2020

Q: We have a few employees who have lost their benefits coverage due to not being able to pay their monthly premiums while out on Worker's Comp or another type of leave. I have a number of questions about what to do regarding their benefits during this time.

1. Should I offer them COBRA? If so, when?
2. When they return to work and are able to afford the monthly premiums again, would that be a qualifying event allowing them to reinstate their benefits? Or do they have to wait until open enrollment or the occurrence of another type of qualifying event?
3. If they can reinstate benefits upon returning from leave, is there a specific timeframe or process for them to notify me that they want to do that?

A: You don't specify which types of benefits you're concerned about, but I'm going to limit my answer to medical benefits because you are asking about COBRA. Before diving in, keep in mind that these types of issues can get very complicated depending on the nature of leave and factual variables. With that said, the answers to your questions generally depend on whether the employee is taking FMLA leave or some other type of leave. Let's start with leave that qualifies for FMLA protection, whether it can also be classified as another type of leave or not.

FMLA leave. Employers are required to maintain health benefits for employees who are on FMLA leave under the same terms as for employees who are not on leave. In other words, you must continue paying your share of the premiums and the employee must continue paying his.

Employees may choose to discontinue their benefits at the beginning of their leave and continue them when they return from FMLA. If an employee elected to continue health benefits during FMLA but fails to pay premiums, coverage can be terminated after giving him notice and a chance to pay. In either event, COBRA is not offered until an employee's FMLA leave comes to an end and he fails to return to work.

If an employee returns to work at the end of his leave, benefits must be resumed "immediately" (rather than waiting until the first day of the next month, another qualifying event, or open enrollment). However, the regulations indicate that benefits may be reinstated "at a desired future date" on request by the employee if the employer agrees to it.

Other types of leave. For leave that is not protected by the FMLA, you may be able to continue the employee's benefits for a period of time, depending on the terms of your insurance policy and/or plan document. If you don't allow leave to continue during periods of non-FMLA leave, it would be appropriate to offer COBRA when the leave begins. Both starting leave and ending it are considered changes in status under the cafeteria plan regulations, allowing the employee to drop and add coverage, respectively. In this situation, coverage would take effect as indicated in your cafeteria plan document (most likely the first day of the month after the employee returns from leave).

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