

How Can An Employer Manage Employee Health Plan Premium Contributions During An Unpaid FMLA Leave?

Problem:

During a Family and Medical Leave Act (“FMLA”) leave of absence, an employee’s group health plan coverage must be maintained on the same basis as when the employee was actively working. Among other things, this means the employee must continue to pay any required contributions to the premium cost for the coverage. Often employees fail to pay their share of the premium cost on time or do not pay the premiums at all during their FMLA leave. In that situation, if the employee does not return to work, the employer may find it difficult to recover any premiums it paid on the employee’s behalf. In addition, the group health plan may pay claims for the employee or covered dependents that otherwise would have been denied due to the employee’s failure to make the required contributions.

How can an employer legally manage employee premiums for health plan coverage during FMLA to minimize health plan costs and liability for claims?

Solution:

The most effective way to manage employee premium payments during unpaid FMLA is to require the “pay-as-you-go” method. The employee is required to pay his or her share of premiums at the same time as they would be due if made by payroll deduction. However, this method does require the employer to follow some administrative requirements under the FMLA. First, the employer must notify the employee in writing of the premium payment requirement and due date. Second, if the employee fails to pay the premium on time, the employer may terminate the employee’s coverage only if the employee’s payment is more than 30 days late and the employer provide written notice to the employee that the payment had not been received at least 15 days before coverage is terminated.

To reduce the time the employer must wait to terminate coverage due to non-payment, the employer should notify the employee on the 15th day following the due date that the payment was not received and that coverage will be terminated if the payment is not received within the next 15 days. If the payment is not received within the next 15-day period, the employer may terminate the coverage retroactive to the date covered by the last timely premium payment.

Caveat:

The FMLA prohibits an employer from requiring more of an employee using FMLA than the employer requires of other employees on leave without pay. Employers wishing to follow the foregoing premium payment requirement must apply the same requirement to employees on unpaid non-FMLA leave.