

Understanding Health Insurance Issues Related to Layoffs and Furloughs

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Employers face unprecedented workforce population challenges as a result of the coronavirus (COVID-19) pandemic, which impacts vital employee health benefits. Indeed, many employers are being forced to consider and implement employee layoffs, furloughs, leaves of absence, and other reductions in force. Such employment reductions raise the issue of what happens to the affected employees' health benefits.

A threshold issue in the analysis is whether a termination of employment has occurred. If the employees' employment has actually been terminated, then a COBRA qualifying event will have likely occurred and the employees should be provided the option to elect continuation coverage pursuant to COBRA (or potentially other state continuation laws). However, in the context of many layoffs, leaves of absence, furloughs, and other reductions in force, a termination of employment does not actually occur. In such cases, the health insurance coverage analysis is more convoluted.

If a termination of employment does not occur, then COBRA is only triggered with respect to the impacted employees to the extent that the reduction of hours results in a loss of eligibility under the employer's health plan. In this regard, the terms of the plan document or insurance contract control. Generally, active coverage terminates for an employee not working sufficient hours to meet the plan's requirements. However, determining whether plan eligibility requirements are met is not necessarily as simple as looking at the hour requirement.

For example, many applicable large employers subject to the Affordable Care Act's Employer Shared Responsibility Mandate utilize the look-back measurement methodology to determine full-time status. Under the look-back measurement methodology, medical plan eligibility is based on the number of hours worked in a prior measurement period. Thus, an employee who was deemed a full-time employee during the prior measurement period should continue to be eligible for active employee coverage for at least the remainder of the current stability period (typically the plan year) as long as a termination of employment has not occurred.

Additionally, employers are required to maintain group health plan coverage for an employee on protected leave under the FMLA in the same manner as if the employee was active.

Separate from protected leave under FMLA, many employers have policies to continue active coverage for a set period of time for other non-protected leaves. Furloughs and layoffs can also sometimes fall within these policies. As such, employer leave policies should also be considered.

Employers contemplating a reduction in force should be in close contact with their insurance and stop loss carriers to ensure consistency with approach. Providing coverage outside of the terms of the plan document can result in carriers denying coverage for incurred claims resulting in self-funding of such claims.

Further, employers should contemplate how to handle payment of the employee portion of the premium (which is normally paid by payroll deduction) for the duration of the layoff, furlough, or leave of absence. Special attention should be paid to cafeteria plan and FMLA rules. Employers considering waiving the employee portion of the premium cost (or paying the COBRA premium) must consider Internal Revenue Code discrimination concerns.

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This is part of our series of **COVID-19 alerts** providing clients with practical advice on measures they can take to navigate through these challenging times. Please contact your Miller Canfield attorney to further discuss employee benefit issues associated with the coronavirus pandemic.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.