

Health Plan Continuation for Those Taking EPSLA or EFMLEA Protected Leave

By: Lyndsey Barnett on April 2, 2020 on graydon.law

Under the FMLA, an employer is required to continue an employee's group health plan coverage at active employee rates during the length of the FMLA leave. Therefore, it came as no surprise that the DOL temporary regulations that were released yesterday on the Emergency Paid Sick Leave Act ("EPSLA") and the Emergency Family Medical Leave Expansion Act ("EFMLEA") require employers to continue an employee's group health plan coverage during the protected leave. The thing that may be surprising to some is that the DOL confirmed that this continuation of health plan coverage applies to all employers subject to the EPSLA and EFMLEA and not just to those that are normally subject to the FMLA (i.e., this applies to all employers with fewer than 500 employees and not just those with 50 or more employees).

This continuation of benefit coverage applies to medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment if the employer provides such benefits. The coverage in these health plans must remain the same for employees on EPSLA or EFMLEA as if they had remained actively at work. Any changes made to the health plans for active employees are permitted to be made for the employees on EPSLA or EFMLEA as well.

Employees are required to continue to pay their portion of the premiums. The premiums must be paid in the same method premiums are paid on other forms of paid leave (normally through payroll withholding). If the employee's leave is unpaid or if pay during the leave is insufficient to cover the employee's share of the premiums, the employer has the same options for collecting premiums as they do for an unpaid FMLA leave. As with the FMLA, the employee has the right to drop health plan coverage during EPSLA and EFMLEA and then be immediately reinstated in the health plan coverage upon return from the protected leave.

