When Can You Terminate Health Coverage During FMLA?

By: Alex Mattingly on May 24, 2019 on graydon.law

The following facts lead to a common situation experienced by many employers:

- Employee participates in the employer's medical plan;
- Employee makes contributions to the plan for his share of the premium payment though payroll deductions;
- Employee later goes on unpaid FMLA leave, and during Employee's leave the premium payments are no longer covered by payroll deductions; and
- Employee forgets or otherwise does not pay his premium payments for medical benefits.

When faced with this situation, the employer can continue to maintain the employee's benefits through the leave period by paying employee's share of the premium payment and recovering the payments when the FMLA leave has been exhausted. However, a more common practice many employers choose to make is to terminate the employee's coverage. The remainder of this post examines how and when an employer can terminate coverage.

After a premium payment due date has passed, an employee on leave must be given a 30-day grace period to make payments. Absent an established employer policy providing a longer grace period, an employer can terminate the employee's coverage as early as the 31st day after the payment's due date, provided that a notice has been sent to the employee at least 15 days before coverage ends. The notice must state that coverage will be dropped on a specified date (which must be at least 15 days after the date of the notice) unless the payment has been received by that date.

For example, if the employee does not pay his premium payment due May 1, then the employer can cancel coverage as of June 1, as long as the employer provided notice to the employee by May 17, stating that the employee's coverage would be dropped on June 1 unless all premium payments were received by that date.

In some cases, the employer may also drop coverage retroactively to the date the unpaid premium payment was due. Retroactive termination can occur only if: (1) the employer has established policies regarding other forms of unpaid leave that provide for the employer to cease coverage retroactively to the date the unpaid premium payment was due, and (2) a notice was given to the employee at least 15 days before the end of the 30-day grace period. The notice must state that coverage will expire on the retroactive date unless the payment has been received by the end of the grace period.

For example, if the employee does not pay his premium payment due May 1 and the employer has retroactive policies established, then the employer can cancel coverage retroactive to May 1 as long as the employer provided notice to the employee by May 17 stating his coverage would be dropped on May 1 unless all premium payments were received by the end of the grace period.

Finally, if the employer decides to go this route and terminate an employee's coverage during a leave, the employer will have to restore medical benefits to the employee immediately when he returns from leave, but only if the employee returns as soon as his FMLA ends (i.e., the employee loses this right if he takes extended leave past his FMLA leave).