



MONTANA MUNICIPAL INTERLOCAL AUTHORITY
PO Box 6669
Helena MT 59604-6669

RISK MANAGEMENT BULLETIN

Please distribute to all appropriate personnel and post in a conspicuous place.

DATE: December 2, 2011 **RM Bulletin #02-12**
TO: Cities and Towns
FROM: MMIA Risk Management
RE: Leaves of Absence: how they affect benefits and recent changes from PPACA

The Perfect Storm: When Workers' Compensation meets Employment Liability and Employee Benefits

Here is a common scenario. How would your city or town handle it?

An employee gets injured on the job and is out on Workers' Compensation disability. While out on Workers' Compensation leave, the employee is not receiving a paycheck from you, and therefore you are not able to deduct the premiums for his health benefits. What do you do?

Here are some questions to ask yourself:

- Is the employee working the minimum number of hours required to be eligible? This may be defined by your health plan, or by your personnel policy manual.
- Do you have a written policy in place (including Family Medical Leave Act) that allows for an employee to remain in active status, even if on an approved leave of absence? This includes leave due to a Workers' Compensation injury.
 - If you do have a written policy, is the employee paying the contributions required to continue coverage?
 - If not, have you notified the employee that premiums are due or benefits will terminate?
 - Keep in mind that a reduction in hours may be considered a "change in status event" by your coverage plan, in which case the employee may be able to elect a lower level of coverage in order to continue benefits, for example from family to single coverage.

Enclosed is a decision tree that may help you in determining an employee's benefit status.

Regardless of where you go for the benefits you provide to your employees, you need to be aware of eligibility requirements, otherwise you may have an employment liability risk. In addition, recent changes from the Patient Protection and Affordable Care Act (PPACA) mean that you really need to be aware of timely notification of such events to your health coverage provider. PPACA states that health plans can no longer rescind coverage except for fraud or material misrepresentation of material facts or failure to pay premium. This means that coverage cannot be retroactively terminated for a participant, unless there is a misrepresentation on the part of the employee for eligibility or a failure to pay required contributions. If the city fails to notify their benefit administrator of benefits termination within the required timeframe, normally 31 days, it may mean that you must pay the required premium through the date that the notification finally occurred.

COBRA, which is a federally regulated assurance of continuation of coverage after termination from a plan, can also be affected for employers that COBRA applies to. COBRA requires notification of terminations within a 30 day period for employees and 60 day period for dependents. If the city fails to notify a plan administrator within the required timelines, the city may be responsible for not only the premiums during that timeframe, but may also become responsible for claims for that participant. Don't let this happen to your city or town; make sure that you give proper notification of benefit terminations within the required timeframe!



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If your coverage is through an insured plan there may also be notification requirements under state law for conversion coverage, which also has a notification time limit, and failure to notify your insurance company of a covered employees loss of eligibility may also create many of the same liability issues for you as the employer as failure to provide timely COBRA information.

Keep in mind that your employees have a responsibility to notify you or the company or entity that provides your coverage of any changes regarding their dependents' eligibility too. For example, let's say that an employee comes to you and says, "I forgot to notify you that I got divorced six months ago." In this situation, coverage can be retroactively terminated for the spouse, as the Interim Final Regulations for PPACA consider this to be a misrepresentation of eligibility on the part of the employee.

If your city or town is an FMLA covered employer, it is required to maintain health insurance coverage for an employee on FMLA leave on the same terms as if the employee continued to work. This means if the group health plan involves co-payments by the city and the employee, arrangements must be made for the employee to pay his or her normal portion of the premiums to maintain insurance coverage, as must the employer. In some circumstances, the employer may recover premiums it paid to maintain health insurance coverage for an employee who fails to return to work from FMLA leave.

What should you do?

- Look at your personnel policies and talk with your city attorney about leaves of absence, including Workers' Compensation leaves. Consider what practices you've used in the past, and if they are not in writing, create written policies.
- Look at the requirements for your employees' health plan and contact the plan administrator with questions. If you participate in the MMIA Employee Benefits Program, contact us at 800-635-3089.
- Contact the MMIA Risk Management Department to discuss your situation at 800-635-3089.

*****For MMIA Employee Benefits Program Members ONLY*****

If you participate in the MMIA EB Program, here are some details that will be helpful in regards to this notice:

- The MMIA medical plan documents leave employee eligibility requirements up to the individual participating member entity's personnel policy. You notify us each year on your group election form of the minimum number of hours required in order to participate in benefits.
- Benefit changes need to be sent into our office within 31 days of a qualifying event. You can use our enrollment form, which is found at www.mmia.net/eb_docs.asp, to notify us of such a change. The form must be signed by a city representative. An employee must sign for changes or an enrollment, but terminations do not require an employee signature. Forms can be mailed or faxed in to our office.
- A reduction of hours is considered a qualifying event for loss of coverage and for COBRA entitlement on our plans. If you have a written policy that allows the employee to remain covered, it is also considered a "change in status event" that allows the employee to change his or her coverage level. For example the employee may elect to drop coverage for a dependent, or switch medical plans if your city or town allows individual selection for the medical coverage.
- If an employee's benefits must be terminated due to ineligibility from reduction of hours, temporary layoff, or some other leave, the employee has the opportunity to elect COBRA coverage, but to do so, they must return the election form within 60 days after they receive it. If the employee returns to an eligible status *within* 63 days, the employee may be reinstated for coverage at that time. If the employee becomes eligible again *after* 63 days, the employee will be treated as a new hire for purposes of benefits, which means your probationary period for benefits would apply.
- Please feel free to contact our department if you have any further questions on this, or any other issue.

This newsletter is published as a service to our members. The articles are not a substitute for the Memorandum of Liability coverage or other coverage documents. All coverage determinations are made on a case-by-case basis, and can only be viewed on the unique facts of the claim presented.

Leaves of Absence and Employee Benefits

