



February 2008

RE: Leave of Absence policies and their effect on benefits

Dear Valued Client:

Many of our clients have inquired about their responsibilities to employees who request a leave of absence. The answer depends upon the size of your group.

If your company has 20-49 employees, there are no state or federal regulations as to how a leave of absence must be handled. The choice to grant or deny the request remains solely with the decision makers of your group. It is also at the company's discretion whether the leave will be paid or unpaid as well as the duration of time. We recommend having a written policy in place to insure all situations are handled consistently. This will help to avoid any potential legal issues which may arise if there is a perception of discrimination.

When implementing a formal leave of absence policy, you must take into consideration how an employee's benefits will be impacted. The Consolidated Omnibus Budget Reconciliation Act (COBRA) guidelines state that an employee who experiences a Qualifying Event must immediately be terminated from all of the employer sponsored group policies. The reason for this action is to start the "COBRA Clock". The affected individual and/or family would have the opportunity to continue their medical and/or dental benefits (other coverages may apply). The maximum benefit period can be 18, 29 or 36 months depending upon the type of Qualifying Event. COBRA does not however dictate who must pay the premiums.

Example:

A loyal employee is retiring and will receive a severance package to commend them for all of their hard work. The group may wish to include 6 months of employer paid health benefits in their package. The insurance carrier(s) must be notified that the retiree is no longer an active employee and therefore will be a COBRA participant. Although not required, we recommend sending a notification to the retiree towards the end of the 6 month extension to inform them that their health insurance will no longer be company paid. If they would like to continue their benefits, they will have the opportunity to do so for an additional 12 months and the cost will be their responsibility. **IMPORTANT:** The maximum benefit duration for termination of employment (voluntary or involuntary) is **18** months. Even though the employer paid for **6** months of coverage, the COBRA Clock started with the employee's Qualifying Event leaving only **12** months remaining.

These procedures would hold true under the New Jersey and New York State Continuation programs as well. These programs would apply to New Jersey or New York **groups with 2-19 employees**. Unfortunately, Pennsylvania does not have a state sponsored program thus the employee's benefits would end immediately.

For groups with 50 or more employees, the rules change. A leave of absence policy for these groups must comply with the Family Medical Leave Act which is federally regulated. New Jersey groups must also consider their state's Family Leave Act.

What is the Family Medical Leave Act (FMLA)?

To summarize, covered employers must grant an eligible employee up to a total of 12 work weeks of unpaid leave during any 12 month period for one or more of the following reasons:

- for the birth and care of the newborn child of the employee; or
- for placement with the employee of a son or daughter for adoption or foster care; or
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- to take medical leave when the employee is unable to work because of a serious health condition.

To be eligible for FMLA, an employee must have been employed by the group for at least 12 months and for at least 1,250 hours of service during the 12 month period immediately preceding the commencement of the leave (other criteria and/or exceptions may apply).

What is the New Jersey Family Leave Act (NJFLA)?

To be eligible for family leave under the NJFLA, an employee must be employed in New Jersey by a covered employer. Like FMLA, the employee must have been employed for at least 12 months however the base hours requirement is 1,000 worked in the preceding 12 months.

Although being similar, the two program's have some notable differences. FMLA allows time off from work due to an employee's own disability, while the NJFLA does not provide covered employees with leave for their own disabilities. In addition, FMLA provides up to 12 weeks in a 12 month period, rather than a 24 month period as provided in the NJFLA.

NOTE: When an employee takes a leave for a purpose covered by both the FMLA and the NJFLA, the leave simultaneously counts against the employee's entitlement under both laws i.e., concurrent not consecutive.

While an employee is on an approved FMLA or NJFLA leave of absence, they must be treated as any other **active** employee. That is, an employer must continue any health insurance coverage in which the employee is enrolled at the time and may not charge them a higher contribution for their benefits.

Additional information on FMLA and NJFLA may be obtained through the following links:

FMLA – US Department of Labor – <http://www.dol.gov/esa/whd/fmla/>
NJFLA – Division of Civil Rights – <http://www.state.nj.us/lps/dcr/law.html>

Please note that we are here to provide guidance and assist you in anyway that we can, however COBRA, State Continuation, FMLA and NJFLA are laws and we are not lawyers. If you anticipate facing a legal issue or have in-depth questions, we recommend contacting the applicable government agency or an ERISA attorney to discuss the matter in full detail.

Sincerely,
PSI CONSULTANTS, LLC