Health Insurance Is a Claims Trap for the Unwary

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Eligibility of health insurance coverage under an employer's group plan terminates when an employee is separated from employment. However, due to the health insurance benefit continuation requirements under COBRA (Consolidated Omnibus Budget Reconciliation Act) and many similar state laws, most employees can elect to continue their health insurance coverage for a certain period of time post employment, as long as they pay the premiums. This process generally works smoothly, assuming the employer has notified a departing employee about his or her right to continue their health insurance coverage. But did you know that if an employer does **not** give the proper notifications to a departing employee, the employee may end up uninsured and the employer may end up with the former employee's medical bills?

Written Notice

That's why COBRA notices are so important. Employers should provide their employees with written notice of their right to continuation coverage both at the beginning of employment and as the employee is going out the door—generally a separate letter dealing with health insurance benefits is best. The notice must instruct the departing employee how to inform the health insurance carrier of the employee's desire to continue coverage. If the employer fails to notify the departing employee of these details, the employee may fail to notify the insurance company to request continuation coverage and the employer may end up paying for any medical bills the employee submits to the insurance company.

Leaves of Absence

Leaves of absence are another danger zone in the health insurance world. When an employee is taking an unpaid leave of absence, paying premiums for health care coverage can get confusing. When an employee is not receiving compensation, how will premiums be paid? Should an employee's health insurance be suspended while she or he is on leave? Most employers decide that it's safer to continue an employee's coverage than to drop the employee from the plan, especially if there is a chance that the employee will return to work after the leave of absence. But—to be fiscally prudent—the nonprofit should require an employee on unpaid leave to make the premium payments.

To avoid the risk that the employer will end up with the medical bills, follow these tips for dealing with health insurance continuation coverage:

1. Send all departing employees a written *COBRA Notice* that spells out the employee's rights to benefit continuation and informs the employee what needs to be done in order for the employee to continue his or her health insurance coverage and for any dependents (as applicable). Send the letter regular mail, keeping a copy, and follow up to make sure the employee both received the notice and acted on the letter's instructions. Insurance companies will often provide employers with the required language for the notification letter.
2. Make sure that both paid and unpaid leave are addressed in the nonprofit's personnel policies. If the employee is on paid leave, health insurance should be handled as it is during regular worked time. During unpaid leave, the employee on leave needs to be informed about premium payments: what payments are

due when—and to whom? Give the employee on leave a schedule of premium payments that she or he is obligated to make along with all the necessary information.

3. Be sure that the nonprofit's employee handbook and all materials given to the employee upon hiring, and when the employee requests a leave of absence, explain how health insurance premiums will be handled during any leave of absence. The employee handbook should be consistent with the provisions of your insurance plan. If you aren't sure how a leave of absence will impact an employee's eligibility for benefits, you can't expect an employee to understand it. Call your broker and find out.
4. Discuss with your insurance broker/carrier how an employee's return to work will affect coverage if a premium has been missed. Ambiguity or misinformation in the employee handbook could result in the nonprofit's liability for an employee's coverage.
5. If a nonprofit pays the premiums for an employee who is on unpaid leave and she or he never returns to work, the nonprofit may wish to seek repayment of the premiums from the former employee. There are provisions in the federal Family and Medical Leave Act (FMLA) that give employers the right to request repayment by the former employee. Nonprofits should have language in their own personnel policies to address leave situations that are not covered by the FMLA, and those policies should specifically address the issue of premium payments for employees on leave.
6. Only allow an employee's health care coverage to terminate for nonpayment *after* you have contacted the employee and stressed the consequences of nonpayment.
7. A sound risk management practice is always to seek advice from legal counsel prior to taking any steps that will result in termination of coverage.

The Nonprofit Risk Management Center welcomes your questions and comments at 703.777.3504 or info@nonprofitrisk.org.