

Introduction



When an employee goes on a leave of absence or is furloughed, it raises a variety of questions regarding that employee's benefits.

- Can the employee maintain their benefits during leave? If so, for how long?
- If not, what happens to those benefits – cancelled, suspended, COBRAed?
- How does the employee pay their premiums during the leave?
- What happens to their benefits when they return to work?

Eligibility Matters



- Health plan
 - ACA – Play or Pay Rules
 - Handbook/District Policy
 - Retiree benefits
-
- Process:
 1. Check the law
 2. Check the plan documents
 3. Check your policies

Check the Law – Maintenance of Benefits



FMLA

- Health, dental, vision, Health FSA and any other medical coverage must be maintained during FMLA leave
 - Do **not** COBRA
 - Employee can choose to discontinue medical coverage during leave
 - Same rights as active employees, e.g. open/special enrollment.
- Other benefits can be cancelled
 - Most employers do not bother cancelling low cost ancillary benefits, e.g. life insurance, disability, etc., where permitted by Plan Document
 - Includes FFCRA: EPSL and EFMLA



WFMLA

- Health, dental, vision, Health FSA and any other medical coverage must be maintained during WFMLA leave
- Other benefits can be cancelled
 - Most employers do not bother cancelling low cost ancillary benefits, e.g. life insurance, disability, etc., where permitted by Plan Document

Check the Law – Maintenance of Benefits



ADA

- No special rules regarding maintenance of benefits during leave
- Maintain consistency with other leaves



Work Comp

- Follow FMLA rules during period of leave that qualifies as FMLA leave
- Otherwise no special rules regarding maintenance of benefits during leave
- Maintain consistency with other leaves

Check the Law – Premium Issues



FMLA

- Employee pays same cost as active employee for medical coverage during FMLA leave.
 - Do **not** COBRA
- Collecting premiums
 - Payroll deductions (*if leave is paid*)
 - Prepay (*cannot be mandatory*)
 - Pay-as-you go (*after tax payments on predetermined schedule*)
 - Catch up (*upon return to work*)
- Canceling coverage for failure to pay premiums during FMLA leave:
 - 30-day grace period
 - 15 day advance written notice coverage will be cancelled for non-payment
 - Do not COBRA if cancelled for non-payment of premiums
 - Most employers don't bother cancelling for failure to pay premiums



WFMLA

- Employee pays same cost as active employee for medical coverage during WFMLA leave.
 - Do **not** COBRA
- Collecting premiums
 - Payroll deductions (*if leave is paid*)
 - Prepay (*can be mandatory*)
 - Pay-as-you go (*after tax payments on predetermined schedule*)
 - Catch up (*upon return to work*)

Check the Law – Premium Issues



ADA

- No special rules regarding premiums during leave.
- Maintain consistency with other leaves



Work Comp

- Follow FMLA rules during period of leave that qualifies as FMLA leave
- Otherwise no special rules regarding premiums during leave
- Maintain consistency with other leaves

Check the Law – End of Leave



FMLA

- All benefits must be restored at end of FMLA leave
 - No waiting period even if coverage was cancelled
- Can recover employee share of premiums not paid during leave
 - No specific time frame for recovery but unreasonable recovery schedule may be retaliation
- If employee fails to return :
 - COBRA medical benefits as of the end of the FMLA leave
 - Including coverage cancelled for failure to pay premiums
 - Can recover employer share of premiums paid to maintain coverage during leave (except when employee medically unable to return)
 - Often no practical way to collect these amounts



WFMLA

- All benefits must be restored at end of WFMLA leave
 - Unclear if waiting period can be imposed if coverage was cancelled
- Can recover employee's share of premiums that were not paid during leave
 - No specific time frame for recovery but unreasonable recovery schedule may be retaliation
- If employee fails to return:
 - COBRA medical benefits as of the end of the WFMLA leave if coverage was not previously terminated
 - Can recover employer share of premiums paid to maintain coverage during leave (except when employee medically unable to return)
 - Often no practical way to collect these amounts

Check the Law – End of Leave



ADA

- No special rules regarding restoring coverage / recovering premiums at end of leave
- Maintain consistency with other leaves



Work Comp

- Follow FMLA rules during period of leave that qualifies as FMLA leave
- Otherwise no special rules regarding restoring coverage / recovering premiums at end of leave
- Maintain consistency with other leaves

Check the Plan Documents/Your Policy

What are you looking for and where to look?

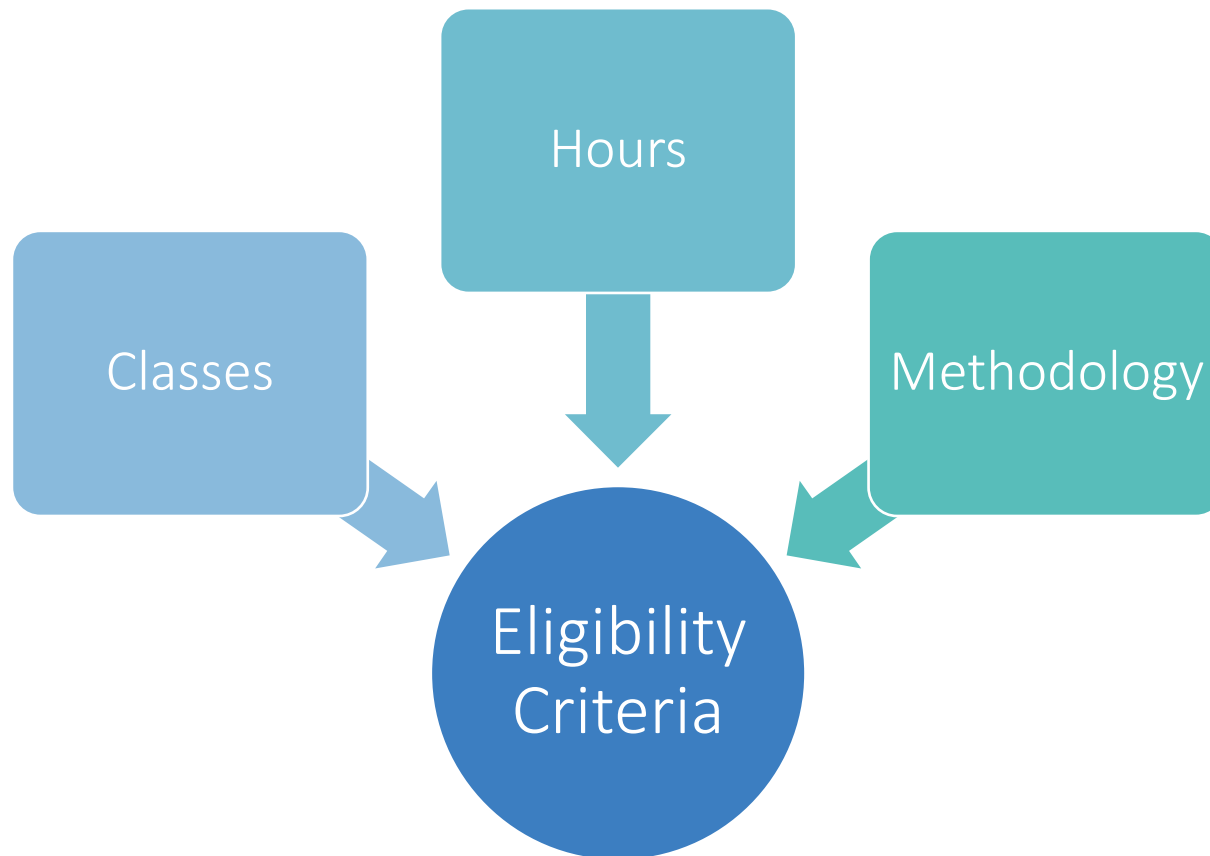
- Eligibility
 - Typically in GMC, COC/SPD, and/or Group App
 - Documents may cross reference one another
- Termination / When Coverage Ends
 - Typically in COC/SPD
- COBRA and Other Continuation Rights
 - Typically in COC/SPD
- Leave of absence
 - Typically in GMC, COC/SPD, and/or Group App
 - Documents may cross reference one another
- Definitions
 - Typically in COC/SPD
- Other relevant sections
 - E.g. waiver of premiums
- Where plan is silent or ambiguous (which it often is), employer must interpret the Plan Document
- This now becomes Check Your Policy

Check the Plan Documents – ACA

Impact of ACA

- ACA does not address what happens to health coverage during leave of absence
- But for Applicable Large Employers, risk of “play or pay” penalty may influence interpretation of health plan eligibility, which in turn will affect what happens to coverage during leave.
- While “play or pay” penalties only apply to health coverage, often makes sense to apply same eligibility interpretation to other benefit plans (where permitted by Plan Documents).

Check the Plan Documents – ACA



Check the Plan Documents – ACA

ACA-FT Status

- If employee is ACA-FT for the duration of the extended leave, employee remains eligible for health coverage during that leave.
- Coverage is **not** COBRAed.
- No penalty risk as long as coverage is affordable.

Scheduled Hours

- Assuming employer treats employees on non-FMLA leave as not scheduled to work 30 hours per week, employee is not scheduled to work 30 hours per week during the period of extended leave so he is not eligible for health coverage during that leave.
- Coverage is COBRAed.
- COBRA premiums most likely not affordable so employee poses a penalty risk.

Hybrid

- Employee is ACA-FT for the duration of the extended leave so employee remains eligible for health coverage during that leave.
- Coverage is **not** COBRAed.
- No penalty risk as long as coverage is affordable.

Questions?

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