

Maintenance of Health Benefits During FMLA Leave

The taking of FMLA leave cannot result in the loss of any employment benefit accrued before the leave began.

- During any FMLA leave, an employer must maintain the employee's coverage under any group health plan under the same terms and conditions as would have been provided if the employee had not taken leave. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave.
- If an employer provides a new health plan or benefits or changes a health plan or benefits while an employee is on FMLA leave, the employee is entitled to the new or changed plan or benefits to the same extent as if the employee were not on leave.
- An employee who chooses not to retain group health plan coverage during FMLA leave is entitled, upon return from leave, to be reinstated on the same terms as before the leave without any qualifying period, physical examination, exclusion of pre-existing conditions, etc.

Payment of Premiums While on FMLA Leave

Any share of group health plan premiums that had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee would be required to pay the new premium rates.

Employees on Unpaid Leave

If FMLA leave is unpaid, the employer has a number of options for obtaining payment from the employee. The employer must provide the employee with advance written notice and the terms and conditions under which these payments must be made (such as in the [Notice of Eligibility and Rights & Responsibilities](#)). The employer may require employees to pay their share of premium payments in any of the following ways:

- Payment would be due at the same time as it would be made if by payroll deduction;
- Payment would be due on the same schedule as payments are under COBRA;
- Payment would be prepaid pursuant to a cafeteria plan at the employee's option;
- The employer's existing rules for payment by employees on "leave without pay" would be followed, provided that such rules do not require prepayment of the premiums that will become due during a period of unpaid FMLA leave or payment of higher premiums than if the employee had not taken leave; or
- Another system voluntarily agreed to between the employer and the employee.

An employer may not require more of an employee using unpaid FMLA leave than of other employees on leave without pay.

Employees on Paid Leave

If paid leave is substituted for FMLA leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

Employees on Workers' Compensation

An employee who is receiving payments as a result of a workers' compensation injury must make arrangements with the employer for payment of group health plan benefits when simultaneously taking FMLA leave.

Employee's Failure to Pay Health Plan Premium Payments

An employer's obligations to maintain health insurance coverage generally cease under the FMLA if an employee's premium payment is more than 30 days late. In order to drop the coverage for an employee whose premium payment is late, the employer must provide **written notice** to the employee that the payment has not been received. The notice must be mailed to the employee **at least 15 days** before coverage is to cease, and must advise that coverage will be dropped on a specified date **at least 15 days after the date of the letter** unless the payment has been received by that date.

If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave, **the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed.**

Employer Recovery of Benefit Costs

Missed Payment

An employer may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employer maintains health coverage by paying the employee's share after the premium payment is missed.

Recovery upon Failure to Return to Work

The employer may generally recover from an employee the share of health plan premiums it paid during a period of unpaid FMLA leave if the employee fails to return to work after his or her unpaid FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to:

- Circumstances beyond the employee's control; or
- The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember that would otherwise entitle the employee to leave under FMLA.

Recovery Not Permitted During Period of Paid Leave

When an employee elects or an employer requires paid leave to be substituted for FMLA leave, the employer may not recover its (share of) health insurance benefit premiums for any period of FMLA leave covered by paid leave.

Revoking Coverage under a Cafeteria Plan During FMLA Leave

An employee taking leave under the FMLA may revoke an existing election of health plan coverage, and make another election for the remaining portion of the period of coverage as permitted under the FMLA.

[Click here](#) for more information on the maintenance of health benefits during FMLA leave.