

HR and Employee Benefits: Common Pitfalls

by Lynn Vuketich Luther

Even if a company is fortunate enough to have a designated employee benefits administrator, employee benefits considerations are a part of the day to day issues faced by human resource managers and small business owners. This article focuses on a few of the common pitfalls we see in our practice.

Benefits Continuation for Employees on Medical Leave. Is it permissible to keep an employee on the company medical plan while he or she is on a medical leave of absence? Like most issues in the world of human resources, it depends. If the employee is eligible for leave pursuant to the Family Medical Leave Act (FMLA), benefits continuation is required by law. But, if medical leave is required beyond the twelve weeks permitted by the FMLA, or if the employee does not qualify for FMLA leave, a company most likely cannot permit benefits to continue, even if it wants to provide that benefit. Most plans require the employee participant to be an active employee, and the definition of what constitutes an active employee varies depending on the plan's requirements. Employers should check their plan to be aware of the specific parameters that define an employee's status. When an employee is no longer actively employed, benefits should be terminated and a COBRA notice should be issued when appropriate.

Adding Family Members to the Company Health Plan. "Can I add Uncle Bob to the company health plan of my family owned business?" Unless Uncle Bob is an employee of the company, the answer is probably no. As explained above, active employment of the primary insured is typically required, even in the case of a family owned business. Merely adding Uncle Bob to the company employee roster or payroll will likely fail to meet the active employment requirement.

COBRA Payments as a Severance Benefit. Some employers want to provide employees with benefits continuation as a part of a severance package. This often takes the form of the employer covering the employee's COBRA payments for a specified period of time. While most employers intend this to be a generous and valuable benefit, many do not realize it may be putting the former employees at a significant disadvantage once the COBRA reimbursement period concludes.



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Employees who lose their jobs are eligible for a special enrollment period on the federal Affordable Care Act marketplace, where they may be entitled to tax credits or subsidies. However, that special enrollment period only lasts 60 days from the date of the employment termination. If the individual does not enroll during that 60 day period, he or she will be unable to do so until the next open enrollment period, which will begin November 1, 2015, for coverage effective on January 1, 2016, and conclude on January 31, 2016. An employee who takes advantage of the three months of COBRA reimbursement offered by his or her former employer may miss his or her window for the special enrollment period, and will either have to maintain expensive COBRA coverage until the next ACA open enrollment period, obtain coverage through a private company or have a period where coverage lapses.

Employers who wish to provide for benefits continuation for departing employees may wish to consider additional compensation in the severance package rather than limiting the benefit to COBRA continuation. The employee would then have the option to obtain COBRA coverage, obtain coverage through the ACA marketplace or use the funds for any other purpose. Although this additional compensation will be subject to withholding, the structure provides employees with more flexibility to obtain future benefits that suit their needs, and eliminates the unintended consequence of missing the ACA's special enrollment period.

For information about employee benefits, please contact [Lynn Vuketich Luther](#) or visit our web site at www.eastmansmith.com.

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