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HEALTH INSURANCE – READ THE POLICY BEFORE EXTENDING COVERAGE DURING LEAVE OR SEVERANCE!

A COMMON SCENARIO – EXTENDING HEALTH INSURANCE COVERAGE

It is not uncommon for employers to provide continued health plan coverage for employees on non-FMLA leaves or in connection with severance packages. However, those employers should be certain that the terms of their group health plan provide for such coverage, otherwise the employer could be liable for all medical expenses incurred.

EXTENDING COVERAGE INSTEAD OF OFFERING COBRA – A BIG PROBLEM

In a recent case a federal appeals court held that the employer's stop-loss insurance policy did not require the insurer to reimburse the employer for an employee's claims incurred after she ceased to be eligible to participate in the employer's self-insured group health plan. At issue was an employee who did not return to work following the expiration of her FMLA leave. Instead of terminating group health plan coverage and offering COBRA coverage, the employer placed the employee on a short term disability leave for six months and continued to cover her under the group health plan in accordance with its corporate policy. However, the terms of the group health plan limited eligibility to employees scheduled to work a minimum of 40 hours per week and employees on FMLA leave or COBRA continuation coverage.

TERMS OF THE HEALTH PLAN NOT FOLLOWED – CLAIM IS DENIED

At the end of the short term disability leave, the employer terminated the employee's employment and her group health plan coverage and offered her COBRA continuation coverage, which she elected. During the short term disability leave, the employee incurred significant medical expenses, which the employer's plan paid. The employer then submitted a claim to its stop-loss insurer, which refused to pay based on the fact that the employee was not eligible for coverage once her FMLA leave expired. The insurer argued that the stop-loss policy only applied to claims paid in strict compliance with the plan's terms, and that the employee had lost eligibility for coverage when she commenced short-term disability leave. The appeals court agreed, and further ruled that—because the employee was offered COBRA at the wrong time (at the end of her disability leave, instead of when she lost eligibility at the end of her FMLA leave)—the policy did not apply to expenses incurred after her purported COBRA election.

READ THE INSURANCE POLICY – DO WHAT IT SAYS

Although this case dealt with stop-loss insurance for a self-insured group health plan, the same analysis would apply to a fully insured group health plan. If you are contemplating continuing coverage under your group health plan for any former employee or an employee on any type of leave of absence, you should review your plan's terms and any insurance policies to make sure that coverage is provided.

If you have questions, please contact Steve Lyman at slyman@hallrender.com or your regular Hall Render attorney.

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