



BENEFIT *Advisor*

In This Issue

In this ninth issue of the McGraw Wentworth Benefit Advisor for 2005, we will examine sticky administrative issues. These situations do not occur every day and if handled improperly could result in liability for your organization. Good policies and procedures will help alleviate the possibility of an “administrative gotcha”. Clear communication will make sure your employees understand how situations will be handled and set expectations for the employee responsibilities in regard to these issues.

We welcome your comments and suggestions regarding this issue of our technical bulletin. For more information on this Benefit Advisor, please contact your Account Manager or visit the McGraw Wentworth web site at www.mcgrawwentworth.com.

Administrative “Gotchas”

The process of administering employee benefit plans has become much more complicated over the last several years because of COBRA, FMLA, HIPAA and other federal requirements. In addition, it seems the number of transactions has increased as well, due to hiring spurts; lay offs, and more frequent mid-year family status changes.

In fact, the task of administering benefits has become so complex, it is difficult for one person and sometimes even one department to keep track of all the necessary requirements. This Advisor discusses “administrative gotchas.” Administrative “gotchas” are situations where important process steps are missed and the situation is not handled optimally. Because these administrative situations do not arise every day, it is easy to overlook the necessary administrative steps. However, if these issues are not properly handled, they will cause confusion and may even result in potential liability for your organization.

These situations can include handling:

- Disabled employees
- Terminated employees
- Severance arrangements
- New hire communication
- Leave of absence provisions

The good news is that many of these problem areas can be eliminated with good policies, established procedures and clear communication.

Disabled Employees

Organizations tend to deal with short-term disabilities fairly frequently, but long-term disabilities are less common. Because many issues can impact disabled employees, organizations should establish written procedures addressing how to handle these situations. Several areas should be considered in the written policy:

- **Termination:** At what point does your organization consider a disabled employee to be terminated? Some organizations will officially terminate an individual after 12 weeks of disability (the FMLA protected leave period) and others will have more generous job protection. The official termination date affects disabled employees in several areas:
 - **COBRA Rights:** The COBRA continuation maximum coverage period is measured from the qualifying event date. Typically, the qualify-



ing event for COBRA rights is termination of employment. If that date is never established, the COBRA clock may never start ticking. This oversight can cause greater liability for your organization and potential difficulties with vendors.

Liability includes increased claims under the health plan. Disabled individuals typically use the health plan more frequently, as a result of

their disabling condition. If your plan is self-funded or

experience rated, this increased utilization will directly impact your plan's claim costs.

Vendor issues occur when your organization extends coverage that may not be approved by your vendor. Some organizations provide coverage under the group health plan for 12 months following a disability as part of their human resource policy. COBRA is extended at the end of the 12-month disability continuation. Your health plan vendor



must approve this requirement. If you are self-funded, your stop-loss carrier must approve this disability extension. If your health plan vendor or stop-loss carrier does not approve the 12-month extension, your organization may be financially liable for the claims incurred during the 12 months of additional coverage (if your stop-loss vendor does not approve the extension, the claims

will not have stop-loss protection). Your organization will want to make sure your vendor is willing to allow leave requirements that are more generous

than federal or state law requires.

- **Life Insurance:** Handling disabled employees' life insurance coverage can be confusing. This insurance will be a critical concern for a disabled participant.

Most life insurance contracts include a waiver of premium provision. This provision allows a disabled individual to continue group life coverage without paying any premium. To qualify for waiver of premium, the disabled

individual must be totally unable to work. Typically, individuals must be disabled for a period of time before they can apply for a waiver of premium.

Waiver of premium is complicated in a number of ways:

- * **What happens to life coverage before an individual can apply for waiver?** Your life coverage contract provisions should answer this question. Some contracts allow an employer to continue to cover disabled employees until the waiting period for waiver is complete. Others may terminate life coverage and allow disabled individuals to convert their life insurance into an individual plan until they can apply for a waiver of premium. Although these issues are discussed in the summary plan description, it is good practice to clarify these issues separately with each disabled employee. A letter describing exactly how your organization will handle life insurance coverage during a period of disability will leave no question about the life coverage that is available.
- * **When is an individual considered disabled for the purposes of waiver of premium?** The definition of disability

NOTABLE THOUGHTS

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for waiver of premium is typically more restrictive than the definition of disability in your long-term disability plan. Just because an individual qualifies for benefits under your long-term disability coverage, does not mean the individual will qualify for waiver of premium under the life plan.

- * ***How does an individual apply for waiver of premium?*** If your organization uses the same carrier for both life and disability coverage, often, the process is automated and internally coordinated. The disability claim processing area will send claim information to the waiver of premium department. Based on the information provided, the carrier can determine if waiver of premium should be approved. This service helps your human resource staff because the staff is not responsible for tracking the waiver of premium waiting period and explaining how to apply for a waiver. On the other hand, this coordinated process may leave human resources out of the loop. Also, if your organization replaces a carrier on the life and/or disability side, the process may no longer be automated and internally coordinated by your carrier. If this

is the case, your organization must set up a process for tracking disabled participants to ensure they receive their waiver of premium application materials.

- * ***Age Matters:*** Most waiver of premium provisions will have a maximum age limit.

An example would be "if an individual becomes totally disabled after age 60, the waiver of premium provision will not apply."

Disabled employees must be informed of the age limit in any correspondence relating to waiver of premium.

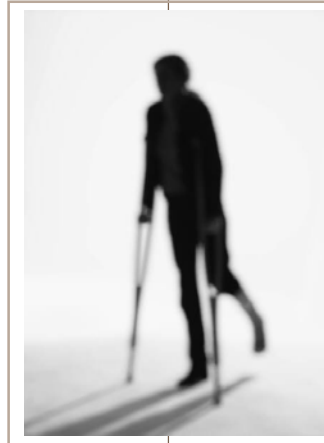
- **FMLA, Workers' Compensation and Short-Term Disability:** These areas confuse many Human Resources professionals. The requirements and purpose of the FMLA are separate and distinct from the purpose of workers' compensation benefits and short-term disability income. FMLA is a federal law requiring an organization to protect an employee's job and medical benefits if the employee is unable to work because of a serious illness or the serious illness of a family member.

Both workers' compensation and short-term disability are plans designed to provide

income to an individual who cannot work because of a disability. Workers' compensation pays a benefit when the disabled individual's injury is work related; short-term disability pays a benefit when the disabled individual's injury is not work related. In both workers' compensation claims and short-term disability claims missed workdays can count against FMLA requirements, providing the employer officially notifies the employee.

Sometimes claims are neither clearly workers' compensation nor short-term disability. Since both have filing deadlines, claims must be filed promptly. If it is not clear which

coverage applies, file for both a workers' compensation claim and a short-term disability claim. Advise both carriers that a claim is being filed under both plans. Allow the carriers to review the claim and evidence to determine which carrier should pay.



Terminated Employees

Although Human Resources handles more terminated employees than disabled employees, many of the issues are similar. In either case, employees must understand how benefits will be handled when they are no longer working. A good approach would be to draft a comprehensive post-employment letter that clarifies any outstanding benefit issues:

- **COBRA Rights:** Most organizations are subject to COBRA continuation requirements. Termination of employment is a qualifying event for COBRA rights that apply to your medical, dental, vision and sometimes medical Flexible Spending Accounts. You need to have a written procedure describing how COBRA notices will be distributed. For more information on COBRA notice requirements, please see http://www.mcwent.com/Benefit_Advisor/2004/BA_Issue7.pdf.

Often organizations do not understand their potential obligation to extend COBRA rights on Medical Flexible Spending Accounts. The general rule of thumb is that if the *potential benefit for the remainder of the year is equal to or greater* than what would be charged in COBRA premiums for the remainder of the year, COBRA must be offered.

The following is a quick example. An individual sets aside \$1,200 in a medical flexible spending account and terminates on June 31. As of June 31, the individual has used \$400 in benefits. This individual should be offered COBRA. The available benefit for the remainder of the year is \$800, the COBRA premium would be \$612 (\$100 per remaining months in the year plus the 2% administration fee).

For a more detailed description of when an employer must extend coverage on a medical FSA, please see http://www.mcwent.com/Benefit_Advisor/1999/Issue%20Five.pdf.

- **Life Insurance:** Even though your summary plan description provides information on what happens to life insurance at termination, it is a good idea to remind employees. In your post-termination letter, describe your life plan conversion rights. You will need to review your summary plan description to clarify whether your plan allows for conversion to an individual policy or for coverage to be "ported" at the group rate. These provisions can vary between employer-paid life coverage and voluntary life benefits. Your letter should include instructions on how your former employees can contact your carrier to convert their life coverage. Also, your letter should make it clear that conversion rights are handled between the individual and the carrier. Your organization need not be involved in helping secure coverage; merely explaining how to convert is sufficient.



- **Other Benefits:** Each organization has a host of other benefits that should be listed in a post-termination letter. Some ideas for consideration include:
 - **401(k) options-** Spell out the option to maintain the 401(k) with the current administrator. Discuss the possibility of rolling any 401(k) balance into the new employer's 401(k) plan or rolling it into an IRA.

- **Unused vacation day policy-** Spell out in detail how your organization handles unused vacation days at the point of termination. Reference your employee handbook for an explanation.

Severance Arrangements

Severance agreements are also not an everyday occurrence. Often, these arrangements are made at the executive level where all details might not adequately be addressed.

In addition, it is not uncommon to have a severance arrangement that is too generous and may cause issues from a coverage standpoint.

The following issues need to be clarified for severance agreements:

- For any medical plan benefit continuation, will the severance period run concurrent with COBRA? It is a good idea to have any continuation of medical, dental or vision coverage run concurrent with COBRA to limit your organization's liability with the former employee.
- For any benefits offered as part of a severance agreement, carrier approval is important:
 - Make sure your medical carrier approves any continuation if the severance agreement period is longer than the initial COBRA continuation period or if the severance period

does not run concurrently. If your plan is self-funded, stop-loss carrier approval is imperative.

- Get approval from your respective carriers for life or disability coverage extensions. It is difficult to get a disability carrier to approve any substantial continuation period for a severance arrangement.
- Require carriers to agree to any severance extensions in writing so there can be no possible dispute at the point of claim.
- Make your request for severance continuation reasonable. Requesting a six-month severance continuation is reasonable, a six-year severance period is excessive. Remember, your carriers must agree to the terms you set forth in a severance arrangement or your organization may end up funding the liability.

- Don't lose sight of your severance agreements. This is important for two reasons. First, once the severance period elapses, you will need to notify the individual of any remaining time under COBRA and how premium payments should be handled. Second, if you change carriers, you must get your new carrier to agree to continue the coverage stated in your severance agreement. For life coverage, this means the requirement to be

actively at work will need to be waived for severed employees.

New Hires

Many complications can arise when you hire new employees. A well-developed process for handling all the necessary new hire communication is a must. It is a good idea to create a new hire checklist to make sure you cover all requirements with your newly hired employee:

- **Communication:** During the first few weeks on the job, new employees will need detailed information on benefit plans, company policy and required legal communication. A new hire newsletter providing brief overviews of benefit plans and timeframes for enrollment will help employees



make plan decisions. Once they enroll for coverage, you will need to provide:

- **Summary Plan Descriptions:** These descriptions should explain all ERISA covered benefits the employee elects.
- **General COBRA Notice:** This notice is required if an individual elects coverage under a plan subject to COBRA. The general notice must be sent to all individuals covered by the plan. Hand-delivering the notice to the employee at work will not be sufficient

delivery for a covered spouse. Your organization should send the general notice first class mail addressed to the employee, covered spouse and any covered children. If you are aware that a dependent lives at another address, the notice should also be sent to the covered dependent at that address as well.

- **HIPAA Privacy Notice:** This notice must be distributed to any employee that elects coverage under a group health plan.
- **Employee Handbook:** This handbook explains all your organization's policies and procedures.

Communication is an important step in dealing with new hires. Usually administrative problems can be traced to unclear communication regarding benefits or company policy. Often a Benefit Administrator will want to provide proof that certain information was delivered. Having a clear process and employee checklist can help protect your organization against claims that required information was not provided.

- **Benefits Enrollment:** Handling enrollment is not technically difficult, but many day-to-day issues can interrupt your ability to manage enrollment effectively. A good follow-up system is essential. This system will help make sure each new hire submits all the necessary paperwork, and it will remind you to check back with carriers to make sure your employee is enrolled properly.

Common enrollment pitfalls include:

➤ **Voluntary Life Insurance Evidence of Insurability:**

- ★ Are you properly tracking evidence of insurability requests and are you clearly informing your employee of the amount of the life benefit? A lack of communication can cause great difficulties if an individual dies and the family is under the impression the life benefit should be higher than it is.
- ★ Don't send mixed messages. If you say the evidence must be approved and then you start deducting premiums for the full amount of the life election without that approval, you are sending mixed signals to your employees about their coverage levels.
- ★ If your voluntary plan is salary-based, how are salary increases handled? If evidence of insurability is required because of a salary increase, how is the request handled? Have you clearly informed your employee what coverage is in effect and how much is



pending evidence of insurability.

➤ **Section 125 Enrollment:**

- ★ Most plans allow employees to pay for certain benefits with pre-tax dollars. Although Section 125 of the Internal Revenue Code permits pre-tax payments, it requires a number of provisions be met. One such provision is that the election must be for the full plan year. For new hires, the first full plan year is abbreviated. It begins on the date they are eligible for the plan and extends only to the end of the plan year. When new hires elect

to set aside money under a medical or dependent care FSA, they must understand the timeframe

to submit eligible claims under the plan. In most instances it will be less than 12 months. It is also important for employees to understand that the maximum benefit under a dependent care account is \$5,000 annually for individuals filing a joint, married tax return. Any amount deducted through a previous employer arrangement is considered part of the \$5,000.

- ★ Section 125 also requires that the election must be prospective. In other words, if your plan has a date of hire effective date, new hires must make their elections before the first day of employment to meet this requirement. Because this expectation is not realistic in many cases, your organization may want to consider amending your new hire waiting period to the first of the month following the date of hire to allow new hires time to properly enroll in a Section 125 plan.

Processing a newly hired employee requires significant communication and follow-up to make sure the new employee takes all the necessary enrollment steps. It makes sense for every organization to develop detailed procedures to make sure all requirements are met.

Leave of Absence Management

Leave of absence is one area where many administrators struggle. When an employee requests a leave of absence, the administrator needs to consider many issues. For more detailed information on leaves of absence please see our *Benefit Advisor* at http://www.mcwent.com/Benefit_Advisor/2003/Issue%20Three.pdf.

Because many organizations don't have a clearly written leave-of-absence policy, benefit administrators are not sure how to handle these requests. At a minimum, most or-

ganizations will need to offer the following leave benefits:

- **Family and Medical Leave Act (FMLA):** Enacted in 1993, the FMLA requires employers with at least 50 employees in a 75 mile radius to provide up to 12 weeks of unpaid leave for either the birth or adoption of a child or for a serious medical condition affecting an employee or a member of his or her immediate family. Employees must have worked 1,250 hours in a 12-month period before qualifying for FMLA rights.

Employers, while not required to continue to pay the employee, must protect the employee's job while the employee is on a qualified FMLA leave and reinstate him or her to the same position at the same location for the same pay and with the same benefits when the employee returns to work. However, an employer is not required to accrue seniority or other employment benefits during the leave. The employer must also allow the employee to continue medical benefits under the same terms as active employees. For example, an employee on an FMLA leave can continue medical coverage by paying his or her employee contribution.

You should determine what criteria you will use to decide whether a leave should be considered an FMLA leave. For example, if an employee needs two weeks of bed rest at the beginning of a difficult pregnancy, will your organization count those two weeks

as FMLA leave? If you choose to count any medical leave that exceeds one week as FMLA, you need to notify each disabled employee in writing when time off is considered part of an FMLA leave. You may grant intermittent leave if the circumstances warrant.

- **Uniformed Services Employment and Reemployment Rights Act (USERRA):**

USERRA was passed in 1994 to clarify ambiguities regarding re-employment rights of reservists called to active duty. In general, USERRA requires that employers:

- May not deny a current employee re-employment, retention or any other benefit of employment because the employee was called for active service in the U.S. military.
- Must restore the benefits and employment privileges of employment when the employee returns to work as if the individual had not left to perform military service.

USERRA does require employer health plans to extend up to 24 months of continuation coverage under their group health plan if the reservist elects to pay the premium. The law also requires employers to consider the employee on a leave of absence and should provide the rights and benefits generally extended to

employees in similar leave situations. The employer must also offer COBRA to reservists called to active duty when coverage under the group health plan ends. Members of the military must be allowed to use accrued vacation or other paid leave of absence provisions even if the normal employer's leave policy does not stipulate this provision.

The employer must allow returning members of the military to re-enroll in the health plan without a waiting period and without subjecting them to any pre-existing condition limitation (if the limitation would not have been imposed before the leave date). The waiver of the pre-existing condition limitation does not apply if a sickness or injury is caused or aggravated by the

military leave. Returning employees must apply for these benefits within a reasonable length of time.

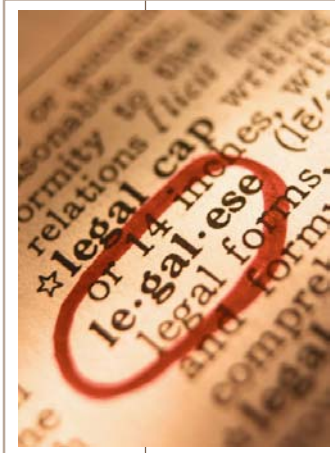
In addition, USERRA requires employers to reinstate military personnel returning from active duty to their previous position with all seniority, pay, status and benefits that would have accrued had the employee been continuously employed. The positions to which employees are entitled when they return from active duty depend upon the length of the absence. If the absence is less than 90 days, they must be reinstated to their previous



positions, provided they remain qualified. If the leave exceeds 90 days, returning employees must be reinstated to the job they would have held if the absence had not occurred. If they are no longer qualified for that position and cannot become qualified with reasonable efforts, they can be reinstated to another position for which they qualify for lesser status and pay.

If you have questions about USERRA, the Department of Labor published a Frequently Asked Questions document regarding reservists being called to active duty. You can reference the FAQ's at http://www.dol.gov/pwba/FAQs/faq_911_2.html.

- **State Law Considerations:** Don't ignore state law when you consider your leave of absence procedures. Several states (California, Hawaii, New Jersey, New York and Rhode Island) have state mandated disability coverage. The



statutes for each state are different so it is important to become familiar with the requirements of any state in which you have employees. You should also check into how state plans coordinate with your short- and long-term disability coverage.

Leave of absence policies can be complicated for organizations to administer and difficult for employees to understand. Therefore, a clear, concise document explaining each type of leave permitted by law and company policy is a necessity. The policy should describe clearly how

benefits, seniority and pay are handled during an approved leave of absence. The policy should also spell out the types of absence that will be considered approved.

Conclusion

The process of administering benefits has become complicated over the last ten years. For this reason,

administering benefits must be handled carefully. Every administrator has been in a position where an employee or former employee has questioned the administrative process. Unfortunately, all too often, vague policies or undocumented processes make it difficult for administrators to be confident in their actions.

Occasionally these disputes may cause administrators to handle situations with too much emphasis on appeasing a disgruntled employee. Well-established procedures for handling new hires, disabled employees, leave of absences, severance arrangements and so on, will minimize potential problems.

If you have any questions regarding this Benefit Advisor, please contact your McGraw Wentworth Account Manager. **MW**

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