

# Q&A

## HR Legal Compliance

Courtesy of Better Business Planning, Inc.

### Q

**Do employers have to maintain an employee's health benefits on FMLA leave? If the employee doesn't pay his or her premium, can the employer cancel the employee's health benefits?**

### A

An employer is required to maintain group health coverage for an employee on FMLA leave on the same terms as if the employee had continued to work. For example, if an employee has family coverage under the health plan, the employee must be allowed to continue this family coverage during his or her FMLA leave. Health plan changes that apply to all active employees—such as changes in coverage, premiums or deductibles—must also apply to employees on FMLA leave.

An employer may require employees taking FMLA leave to pay their share of health plan premiums, although they cannot be required to pay more than what they would have paid if they had remained actively employed.

An employee may choose not to retain group health plan coverage while on FMLA leave or may stop paying premiums for his or her coverage. Unless an employer has an established policy with a longer grace period, the employer is not required to maintain health coverage for an employee on FMLA leave if the employee's premium payment is more than **30 days** late.

Employers must notify employees on FMLA leave before health care coverage is dropped for lack of premium payments. Generally, an employer must provide written notice to the employee at least **15 days** before coverage is to cease. The notice must explain that the payment has not been received and that coverage will be dropped on a date that is at least 15 days after the date of the letter, unless payment is received by that date.

Alternatively, when an employee stops making premium payments while on FMLA leave, the employer may decide to maintain the employee's coverage by paying both its share and the employee's share of the premium. After the FMLA leave ends, the employer may recover from the employee the portion of the employee's share of the premium that it paid, even if the employee does not return to work following leave.

Upon the employee's return from FMLA leave, the employer must unconditionally restore the employee to the same coverage and benefits that he or she would have had if he or she had not taken leave and stopped paying premiums. The employee cannot be required to re-qualify or meet any other conditions prior to being reinstated to the group health plan.

