

Can An Employer Terminate The Health Insurance of An Employee Who Turns 65 and Becomes Medicare Eligible?

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The answer is “it depends”. The Medicare Secondary Payer (“MSP”) rules determine which coverage is the primary payer when an employee is a beneficiary of both an employer’s group health plan and Medicare. The primary payer is the insurer that is the first to pay coverage of a healthcare bill. The secondary payer covers remaining costs if any, up to its limits, that the primary payer insurance does not cover.

Individuals become eligible to apply for Medicare benefits at the age of 65. Just because an employee is eligible, does not mean they will enroll. An individual will only be automatically enrolled if they file a claim for Social Security retirement benefits. Unless they file such a claim or enroll in Medicare, an employer should not terminate an employee’s group health coverage.

In a company with 20 or more employees Medicare is considered secondary to the group health plan of the employer. When Medicare is secondary (i.e., >20 employees), the MSP rules prohibit the employer from involuntarily terminating an employee’s health coverage because he or she is enrolled in and has become a Medicare beneficiary.

In a company with fewer than 20 employees (for the past year), Medicare is considered primary, instead of the group health plan of the employer. The MSP rules do not prohibit an employer from terminating the employee’s coverage if they enroll in Medicare. Do not, however, assume that an employee is enrolling in Medicare when they turn 65.

Additionally, an employer has to consider whether terminating the employee’s coverage would violate the Age Discrimination in Employment Act (ADEA). Generally, the ADEA prohibits group health plans from excluding active employees (or their spouses) from coverage solely because they are Medicare beneficiaries. There is an exception called the “equal benefit or equal cost” standard. This principle requires that employer-sponsored benefit plans provide equal benefits to all participants or require equal contributions from all participants. It is narrowly construed and difficult to meet.

Takeaway: This is not a simple issue and every employer’s circumstances are unique. We strongly recommend you consult your [employment attorney](#) before deciding how to proceed.

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