

## My Employee Is On An Extended Leave-Do I Continue Their Health Insurance?

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When an employee is out on an extended leave, it is not the employer who decides if the health insurance benefit can be continued, it is the law and the health insurance provider.

### **Leave protected by FMLA or NJFLA**

If an employer is required, under law, such as the Federal Family and Medical Leave Act (FMLA) or New Jersey Family Leave Act (NJFLA), to continue health insurance while an employee is out, their health insurance must be continued pursuant to the same terms during active employment: the employer pays their portion and the employee pays their portion.

If the employee does not pay their portion of the health insurance during a protected leave, after certain steps are taken, it may be canceled. Alternatively, an employer can decide to pay the employee's portion while the employee is out and seek reimbursement upon the employee's return. If the employee does not return, the employer may seek reimbursement for the health insurance payments it made during the employee's protected leave.

### **When Leave Is Not Protected by FMLA or NJFLA**

If an employee is out on a leave that does not require health insurance continuation as described above (such as a reasonable accommodation leave or some other leave such as a personal leave of absence), it is likely that that employee's health insurance will have to be COBRA'ed. This usually occurs because the employee is not working the requisite number of hours that the employer's contract with the health insurance carrier requires for that employee to receive health insurance.

If an employee takes a reasonable accommodation or personal leave, and the employer is unsure of its contract terms with the health insurance carrier regarding such leaves, it should contact the carrier to determine if COBRA applies. The decision isn't up to the employer—it's governed by the contract. Failing to place an employee on COBRA during a non-protected leave can expose the employer to liability for the employee's medical expenses during or after the leave.

### **Unsure If Coverage Should Continue? Check Before You Risk Liability.**

Continuing, or not continuing, insurance during a leave of absence is a complicated question. Not taking the correct steps could lead the employer having to pay for health care costs. If you have any questions, please reach out to a member of our [Employment Law Team](#).

#### **Attorney**

- Tracy Armstrong

#### **Practice**

- Employment Law