Benefit Eligibility Considerations for Leaves of Absence (LOA)

Plan Eligibility Rules

- Most group health plans require employees to maintain a certain number of hours to be eligible for benefits (e.g., 35 hours per week).
- Hours of service required to maintain eligibility should be described in the Summary Plan Description (SPD).
- When an employee does not maintain the required hours, it may result in a loss of benefit coverage.
- Plans and policies may include language that allow an employee to continue benefits as an active employee even when they are not meeting eligibility requirements on a short-term basis (e.g., furlough or non-FMLA leave).
- Employers looking to provide more generous coverage terms should discuss options with carriers and seek approval for any changes.

Continuation Rights

- Employers should extend any continuation options required under FMLA, USERRA, COBRA or any state continuation for all eligible plans.

Premium Payments While on Leave

- **Paid Leave:** Employers may collect premiums through salary reductions under the cafeteria plan.
- **Unpaid Leave:** Employers will use one or more methods allowed by FMLA (pre-pay, pay-as-you-go, or catch-up) for FMLA leave. Employer determines how to collect premium and should be outlined in plan document/SPD.
  - Employers may wish to use the same rule for Non-FMLA leave.
  - When “pay-as-you-go” method is utilized, employee would pay the employer on a post-tax basis.
  - If employee fails to pay the required premium, coverage can be terminated for nonpayment.
- HSA funds cannot generally be used to pay for health insurance premiums. There are two exceptions:
  - COBRA premiums; and
  - Premiums while the individual is receiving unemployment compensation.

Election Changes

- When LOA causes a loss of eligibility, the employee is permitted to drop a pre-tax election.
- There may be other situations where a loss of eligibility does not occur and permitted election change provisions should be reviewed.
- **Special FMLA rules:** Employee taking leave under FMLA may continue an existing election or cancel coverage during FMLA and reinstate coverage upon returning from leave.
  - Includes Health FSA and Dependent Care FSA.
- Plan document should identify payment options for employees continuing coverage during FMLA which include:
  - Prospective pre-tax election for the entire amount.
  - Month-to-month after-tax payment.
  - Catch-up pre-tax payment.
    - If FMLA leave runs across two plan years, the prospective lump sum payment is not permitted.
- **Status change with no loss of eligibility:** Employee with a reduction in hours, who maintains eligibility under the plan should generally not be given the opportunity to drop or change a pre-tax salary reduction election to discontinue benefits, except as allowed under FMLA.
- Employee must have both a status change such as an unpaid leave of absence and the status change must affect eligibility under the employer plan, including election changes to a health FSA.
- A cafeteria plan may allow an employee to prospectively revoke an election of coverage under a group health plan that provides MEC or better coverage when there is a reduction in hours of an ACA FTE that otherwise does not affect eligibility.
  - The permitted election change must be included in the written terms of the cafeteria plan document, and any plan amendment to adopt this permitted election change must be made on an anticipated future basis.

ACA Full-Time Employees

- Reduction in hours will affect ACA FTE determinations differently depending on the measurement method used.