NEWFRONT

Health Benefits While on Leave

2024 Edition

Audio

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Guide Topics

What is a Leave of Absence?

It could mean many things!

- It could be a job protected leave under FMLA, CFRA, or PDL (or other state law), a paid leave under SDI or PFL (or other state/local law), an unpaid leave, an unprotected leave, or a leave pursuant to company policy
- Each form of LOA comes with different health plan coverage, payment, and other compliance issues at the federal, state, and local level
- This guide focuses on the situations where employers are required to offer health coverage to employees on leave, how employers typically offer coverage more broadly than required, and the other laws such as ACA and ADA that may affect leave analysis for health benefits.

Health Benefits While On LeaveTopics for Discussion

1. **Protected Leaves:** The requirement to maintain active coverage at the active employee premium rate
2. **Non-Protected Leaves:** Option to extend active coverage during leave, up to limits imposed by carrier
3. **ACA Complications - LBMM:** Look-back measurement method keeps full-time status in stability period
4. **ACA Complications – Hours of Service:** Which forms of compensation during leave qualify as hours
5. **ADA Reminders:** Health coverage may terminate even where ADA prevents termination of employment

01

Protected Leave

Maintaining Active Coverage

Maintaining Active Coverage

Employers Must Maintain Active Group Health Plan Coverage

- Protected leave includes FMLA, CFRA, PDL, and many other state equivalents
- **Employers must maintain active health plan coverage for an employee on a protected leave**
- **Employee cannot be required to pay more than the active employee-share of the premium while on protected leave**
- Note: Employer cannot charge employees at the 102% COBRA rate!
- Open enrollment rights apply in the same manner as active employee

Employee Right to Terminate Coverage

- FMLA requires that employees be provided the option to drop health plan coverage during the leave (e.g., because employee does not want to pay)
- Section 125 rules permit election change to revoke coverage election during a period of unpaid leave
- Coverage will cease for the leave period if employee makes the election to terminate coverage
- Upon return, employee still has the right to be reinstated in coverage on same terms prior to leave upon return (no waiting period etc.)

Employee Payment for Coverage

The Section 125 rules provide three ways for employers to administer collection of the employee-share of the premium for coverage during an FMLA leave:

1	**Pre-Pay** • Employee pays for coverage in advance of the leave pre-tax through payroll • Employee elects to pay all or portion of anticipated leave period on final or series of paychecks prior to the leave *Two Limitations:* • Pre-pay cannot be the sole option offered (must offer at least one other) • Pre-pay not available to pay for coverage in subsequent year
2	**Pay-As-You-Go** • Employee pays for share of coverage in installments during leave • Where leave is paid, employee can pay pre-tax through payroll • Where leave is unpaid, employee will pay after-tax (similar to COBRA)
3	**Catch-Up** • Employee agrees in advance to pay for coverage upon return from leave • Payment is pre-tax via payroll on first or series of paychecks upon return • Likely not an issue to pay pre-tax where the leave straddles two years

Terminating Coverage

Employers May Terminate Coverage If Employee Fails to Pay

- Employers can terminate coverage for an employee on FMLA leave if the employee is **more than 30 days late** paying the employee-share of the premium
- Must provide written notice to the employee that payment has not been timely received
- Written notice must be mailed at least 15 days before coverage will terminate, and it must advise that coverage will terminate on a specific date at least 15 days after the letter

Restoring Coverage upon Return

- Upon return from protected leave, the employer must restore any benefits that were terminated during the leave (unless otherwise elected by the employee)
- Restoration requirement applies even if the employee lost coverage for failure to pay during the leave
- Employee cannot be required to satisfy the plan's waiting period (if any) again upon return
- However, the employer may recover the **employee-share of the premium** not paid by the employee during the period coverage was in effect

Failure to Return from Leave

COBRA Rights	Recovery of Premiums

• If the employee fails to return from protected leave, active coverage will generally terminate as of the end of the last day of the protected leave (absent a company leave policy to extend coverage beyond the protected leave period)
• Failure to return from FMLA leave is a COBRA qualifying event
• **The employee (and any covered spouse/dependent) experiences a COBRA qualifying event as of the last day of the FMLA leave**
• If coverage terminated prior to the end of the protected leave because the employee failed to timely pay, **there will be a coverage gap** from the loss of coverage until the last day of the FMLA leave when the qualifying event occurs
	• Employers have the right to recover the **employer-share of the premium** if the employee does not return to work (plus any unpaid employee-share)
	  ◦ Excludes failure to return due to serious health condition, military issues, and other circumstances beyond employee's control
	  ◦ Employee is considered to "return" upon completing at least 30 calendar days
	• **Treated as a debt owed by the non-returning employee to the employer**
	Reality Check:
	  ◦ In some cases, there will be ability to recover the debt from vacation/PTO
	  ◦ Where that's not an option, rules suggest employer may **"initiate legal action against the employee to recover the costs"**
	  ◦ Would many employers really do that?

Account-Based Plans

Health FSA: Group Health Plan with Employee Contributions

- Coverage (i.e., ability to incur reimbursable claims) remains in effect during the protected leave period unless the employee revokes the health FSA for the leave period
- Contributions for leave period are handled through one of the three methods outlined on Slide 5
- Employee on unpaid FMLA leave must have option to revoke health FSA coverage (unless catch-up option is offered—in which case employer may require it)

Where Employee Revokes Health FSA Coverage During Leave:

- Health expenses incurred during the leave period are not eligible for reimbursement
- Upon return, employee has two options:
  1. **Full Election:** Employee resumes election amount in effect before leave and makes up the unpaid contributions during leave (but no coverage during leave period)
  2. **Reduced Election:** Employee does not make up the unpaid contributions upon return, resulting in lower total election (i.e., coverage) amount available for the year

Health Reimbursement Arrangment (HRA): Defined Contribution Plan Without Employer Contributions

- Identical ability to incur/reimburse claims while on leave as if active employee

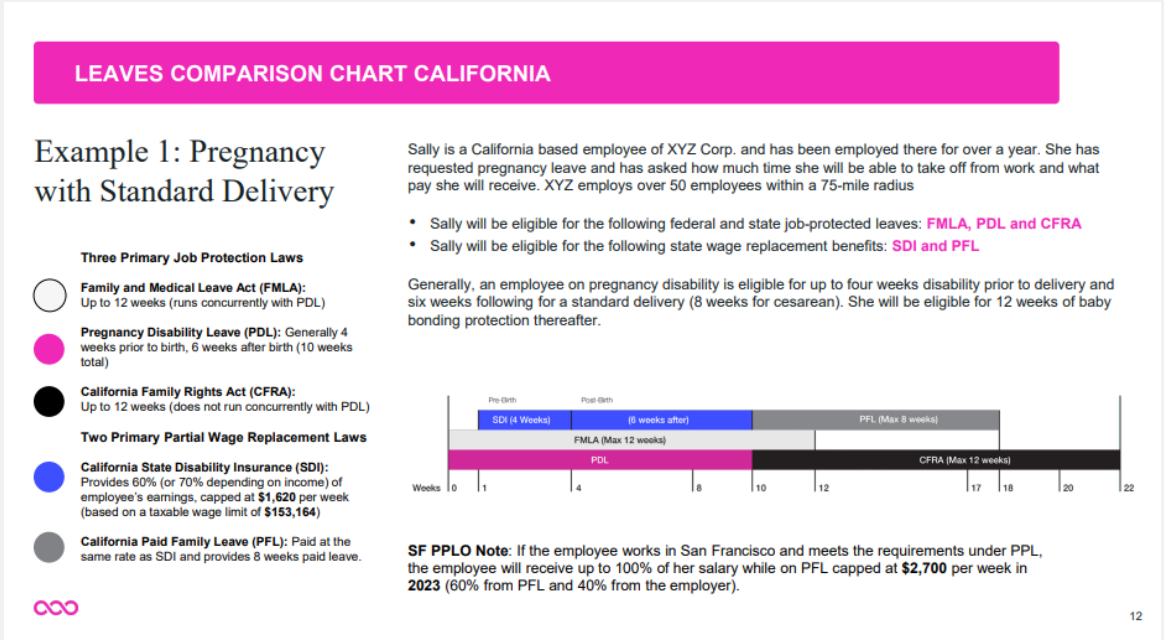
Health Savings Account (HSA): Not a Group Health Plan

- Not subject to leave laws—may discontinue contributions during leave period

A Situational Guide for Employers

Newfront Federal/ California/San Francisco Protected Leave Guide

Click here for a summary overview of how protected leave laws apply to different situations!



LEAVES COMPARISON CHART CALIFORNIA

Example 1: Pregnancy with Standard Delivery

Sally is a California based employee of XYZ Corp. and has been employed there for over a year. She has requested pregnancy leave and has asked how much time she will be able to take off from work and what pay she will receive. XYZ employs over 50 employees within a 75-mile radius

- Sally will be eligible for the following federal and state job-protected leaves: **FMLA, PDL and CFRA**
- Sally will be eligible for the following state wage replacement benefits: **SDI and PFL**

Generally, an employee on pregnancy disability is eligible for up to four weeks disability prior to delivery and six weeks following for a standard delivery (8 weeks for cesarean). She will be eligible for 12 weeks of baby bonding protection thereafter.

Three Primary Job Protection Laws

Family and Medical Leave Act (FMLA): Up to 12 weeks (runs concurrently with PDL)

Pregnancy Disability Leave (PDL): Generally 4 weeks prior to birth, 6 weeks after birth (10 weeks total)

California Family Rights Act (CFRA): Up to 12 weeks (does not run concurrently with PDL)

Two Primary Partial Wage Replacement Laws

California State Disability Insurance (SDI): Provides 60% (or 70% depending on income) of employee's earnings, capped at **$1,620** per week (based on a taxable wage limit of **$153,164**)

California Paid Family Leave (PFL): Paid at the same rate as SDI and provides 8 weeks paid leave.

SF PPLO Note: If the employee works in San Francisco and meets the requirements under PPL, the employee will receive up to 100% of her salary while on PFL capped at **$2,700** per week in **2023** (60% from PFL and 40% from the employer).

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02

Non-Protected Leave

Optional Employer Policies Can Extend Active Coverage

Non-Protected Leaves – The Big Picture

What Are Non-Protected Leaves?

- Any leave not protected by FMLA, CFRA, PDL (or other state equivalents)
- **Many reasons employers may make non-protected leaves available:**
  - Employer is not subject to FMLA/CFRA
  - Employee is not eligible for FMLA/CFRA
  - Leaves that extend beyond protected leave period (e.g., longer new child leaves)
  - Sabbatical leaves as a way to reward/retain long-term employees
- In many cases, employers will be very accommodating in these situations (i.e., provide some form of company leave, not terminate EE for job abandonment)

Plan Eligibility Generally Limited to Full-Time Employees

- Default approach is coverage will terminate for employees not working full-time
- ***Non-Protected Leave from Outset:*** Coverage will generally terminate as of the start of leave (or end of the month in which the leave begins)
- ***Transition from Protected to Non-Protected Leave:*** Coverage will generally terminate as of the end of protected leave status (or end of that month)
- **COBRA qualifying event occurs in either case:**
  - Loss of coverage caused by reduction in hours or failure to return from FMLA leave

Employer Non-Protected Leave Policy

Employers frequently have a leave policy to permit continuation of active health coverage during non-protected leaves. Within limits, carriers (and stop-loss providers) will generally permit this policy.

Typical Employer Leave Policy Continuing Active Coverage	**Important Consideration** Insurance Carrier Approval
Common approach will continue active coverage until the later of: 1. The end of the protected leave period (if any); or 2. Six months following the start of the leave • Note: Protected leave period in some situations can extend beyond six months (e.g., in CA it can extend up to seven months for extended pregnancy disability leaves followed by CFRA baby bonding) • COBRA rights at end of this period	• Insurance carriers (or stop-loss providers for self-insured plans) typically permit the employer to offer active coverage during a non-protected leave period pursuant to the employer's leave policy • **Must be very careful not to extend active coverage beyond the period the carrier (or stop-loss) will permit** • That could result in the need for employer to self-fund claims (or no stop-loss coverage) • Most carriers (and stop-loss providers) permit employer policies that extend coverage up to six months

Extremely Generous Employers

Some very generous employers have policies that permit non-protected leaves to extend beyond six months. In that scenario, **employers need to be sensitive to the insurance carrier (or stop-loss provider) limitations—**they generally will not extend active coverage beyond six months.

Post-Six Months Solution 1 Fully Insured Plan: COBRA Subsidies	**Post-Six Months Solution 2** Self-Insured Plan: Taxable Compensation
Provide a COBRA subsidy in the amount of the employer-share of the premium for active employees (+2%) • Note: The ACA added fully insured plan nondiscrimination rules • Those §2716 rules are currently delayed indefinitely until further notice from IRS/DOL/HHS • Employer should consider stating in any materials communicating the subsidy that it may cease if the rules take effect during the subsidy term	**Pay the employee an amount equal to the employer-share of the premium for active employee (+2%) in standard taxable compensation** • This is frequently the only method that will avoid creating issues under the §105(h) nondiscrimination rules that apply only to self-insured plans • Employer may choose to gross up employees to make them whole • Payment generally should not be conditioned on the employee electing COBRA

Template Provision for Fully-Insured Subsidy

Sample Language—Recommended provision to include for any COBRA subsidy to extend six months or longer

The Company reserves the right to discontinue any COBRA subsidies in the event the nondiscrimination provisions added by Section 10101(d) of the Affordable Care Act, as codified in Public Health Service Act §2716, take effect.

Pursuant to IRS Notice 2011-1, such nondiscrimination provisions do not apply until after regulations or other administrative guidance of general applicability has been issued by the Internal Revenue Service under §2716. If such guidance is issued and takes effect during the period in which the Company intends to subsidize your COBRA coverage, such COBRA subsidies will cease as of the effective date of such guidance to avoid potential excise tax liability to the Company under Internal Revenue Code §9815.

If the Company discontinues your COBRA subsidies pursuant to application of the nondiscrimination provisions described above, the Company will make an additional payment to you in standard taxable compensation, subject to withholding and all applicable payroll taxes, intended to cover the amount of the discontinued COBRA subsidy for the remainder of your intended COBRA subsidy period.

[Optional: *The Company will also pay you a "gross up" amount intended to cover the tax liability from this additional payment.*]

Template Provision for Self-Insured “Subsidy”

Sample Language—Recommended provision to describe taxable income alternative to direct COBRA subsidies

The Company will pay you an additional amount of [Enter amount—can be in regular intervals or lump sum] *in standard taxable compensation, subject to withholding and all applicable payroll taxes, intended to cover the cost of your* [Optional: *“major medical plan”* to exclude all other coverage] *COBRA premium for* [Enter duration]*. This amount is based on* [*“your full”* or *“*[X percentage] *of your”*] [Optional: *“employee-only”*] *COBRA premium, including the 2% administrative fee.*

[Optional: *The Company will also pay you a “gross up” amount intended to cover the tax liability from this additional payment.*]

03

ACA Complications

The Look-Back Measurement Method’s “Stability Period”

Look-Back Measurement Method:
ACA Complications with Leaves

ALEs subject to the ACA employer mandate rules generally must apply either measurement method to determine employees' full-time status:

- The monthly measurement method is generally recommended for employers with all or almost all full-time workforce
- The look-back measurement method is generally recommended for employers with a significant population of employees who may fluctuate above and below 30 hours per week
- *These slides primarily address the LBMM because of the additional leave-related considerations under that approach*
- *ALEs that utilize the MMM may avoid many of these complications*

There Are Two Different Measurement Methods:

1

The Monthly Measurement Method (MMM)

- Full details: https://www.newfront.com/blog/the-aca-monthly-measurement-method

2

The Look-Back Measurement Method (LBMM)

- Full details: https://www.newfront.com/blog/the-aca-look-back-measurement-method

Determining Full-Time Status: The LBMM

Under the look-back measurement method (LBMM), employers test whether an employee averages 30 hours of service per week in a measurement period to lock in full-time or part-time status for the associated stability period. Employers can also place new variable hour, seasonal, and part-time employees in an initial measurement period prior to reaching full-time status.

- Full details: https://www.newfront.com/blog/the-aca-look-back-measurement-method

Ongoing Employees

Generally, if the LBMM is used for one employee to determine full-time status, it must be used for all employees

- **Exception:**

  Employer can choose separate measurement methods for:

  - Hourly vs. salaried
  - Employees in different states
  - Union vs. non-union
  - Employees in different union groups

- **Typical Structure (Calendar Plan Year):**
  - Measurement period: 11/1 – 10/31
  - Administrative period: 11/1 – 12/31
  - Stability period: 1/1 – 12/31
- *Note:* The 90-day administrative period limit prohibits measurement period running from 10/1. Many employers therefore use 10/15 or 11/1 as a starting point for the standard measurement period.

Determining Full-Time Status: The Look-Back Measurement Method

Stability Period Keeps Status "stable" Even After Reduction in Hours

The LBMM and Changes in Employment Status:

- The standard measurement and stability period rules will continue to apply to an employee who has experienced a reduction in hours, is furloughed, or is on a leave of absence
- The LBMM will therefore preserve full-time status for at least the remainder of the current stability period (generally plan year) for those employees who tested as full-time during the prior measurement period

Key Points Under the Look-Back Measurement Method:

1

Retaining Full-Time Status

An employee who is in a stability period as full-time and experiences a change in employment status to working part-time hours or going on a leave will nonetheless remain full-time for ACA purposes the duration of the current stability period. The employee's full-time status is kept "stable" for the entire stability period regardless of how many hours per week the employee is currently working.

2

Losing Full-Time Status

Employees who do not average at least 30 hours of service over the full standard measurement period (i.e., generally do not reach 1,560 hours of service in the typical 12-month standard measurement period) can be removed from coverage as of the start of the new stability period (generally the start of the new plan year) because the employee will be treated as part-time for ACA purposes for the duration of that stability period. This will be a COBRA qualifying event as of the end of the plan year in which the employee loses coverage (loss of coverage caused by a reduction in hours).

Returning From a LOA (or Rehire)

Break in Service: 13 or more consecutive weeks	Break in Service: Rule of Parity	No Break in Service: Continuing Employee
Where the employee did not have an hour of service for the company for a period of at least 13 consecutive weeks.	Rule of parity applies where the break in service is at least four consecutive weeks, but shorter than 13 consecutive weeks (26 weeks for educational organization).	Where the period of leave (or period between termination and rehire) is not a break in service, the returning employee must be treated as a "continuing employee".

• Upon return from leave, **the employee can be treated as a new employee.**
• The same principles in this case would apply to a new hire.
• If full time, must offer coverage no later than the first day of the fourth full calendar month to avoid penalties.
• If variable hour, seasonal, or part-time, employer can put the returning employee through a new initial measurement period before offering coverage.
• Note that the break period must be 26 weeks to treat the employee as a new employee if the employer is an educational organization.
	• Under the rule of parity, a break in service occurs **if the employee's period with no credited hours of service is longer than the employee's immediately preceding period of employment.**
	• For example, employee works three weeks for an employer prior to going on unpaid leave (not "special") of ten weeks.
	  ◦ The ten-week period with no hours of service is a) at least four weeks long, and b) longer than the immediately preceding three-week period of employment.
	  ◦ Under the rule of parity, this is a break in service, and the employer may treat the employee as a new employee upon return.
		• Under the look-back measurement method, a continuing employee will return to the same status in the stability period.
		• This means that if the continuing employee returns in a stability period in which the employee was being treated as full-time before the leave, the employee will be treated as full-time upon return and through the end of the stability period.
		• Continuing full-time employees enrolled prior to termination must be offered coverage upon first day of return, or, if later, **as soon as administratively practicable**
		• Rules deem first day of the calendar month following return to always comply under this standard.

General Hours of Service Rules

Treas. Reg. §54.4980H-1(a)(24) defines an "hour of service" as follows:

- **Active Duties:** Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and
- **Inactive Payments:** Each hour for which an employee is paid, or entitled to payment by the employer for a period during which no duties are performed due to:
  - Vacation,
  - Holiday,
  - Illness,
  - **Incapacity (including disability),**
  - Layoff,
  - Jury duty,
  - Military duty, or
  - Leave of absence

Treas. Reg. §54.4980H-3(b) sets forth the calculation rules:

Hourly Employees:

- **Actual Hours:** Employer must calculate actual hours of service from records of hours worked and hour for which payment is made or due
  - Generally straightforward data from payroll
  - Special exceptions for hard to track hours

Non-Hourly Employees (e.g., Salaried):

1. **Actual Hours:** Use actual hours of service from records of hours worked and for which payment is made or due;
2. **Days-Worked Equivalency:** Employee is credited with eight hours of service for each day the employee is paid or entitled to pay; or
3. **Weeks-Worked Equivalency:** Employee is credited with 40 hours of service for each week the employee is paid or entitled to pay

Hours of Service During Leave Under the LBMM

Paid Leave of Absence	Unpaid Leave	"Special" Unpaid Leave
Paid leave is considered hours of Service for purposes of pay or play.	An unpaid leave of absence that does Not qualify as "special unpaid leave".	Unpaid leave that is: ● Subject to FMLA ● Subject to USERRA; or ● On account of jury duty
• This is because with paid leave, the employee is entitled to payment for a period during which no duties are performed due to the leave of absence. • Means that a period of paid leave will be treated the same as a period of active employment duties. • When using the look-back measurement method, the employee will have **hours of service credited in the measurement period for the duration of the paid leave** as if active or on paid vacation.	• In this case, the employee will not receive any hours of service credit. • When using the look-back measurement method, the employee will have **no hours of service for the duration of the unpaid leave.** • If the employee is at or near 30 hours per week when active, the period of unpaid leave could cause the average over the course of the full measurement period to dip below 30—resulting in the employee being treated as part-time for the associated stability period.	• When using look-back measurement method, two options for addressing special unpaid leave: • **Excluded Period:** Exclude the period of special unpaid leave from the measurement period computation by determining the employee's average hours of service without the period of special unpaid leave. OR • **Imputed Hours:** Credit the employee with hours of service during the period of special unpaid leave at a rate equal to the average weekly hours of service for weeks that were not part of the special unpaid leave.

Employees on Leave: Inactive Payments and Hours of Service

Included in Hours of Service

- IRS confirmed that payments are generally deemed to be made by the employer **regardless of whether the payment is made directly by the employer**
  - For example, payments made from an insurance carrier or trust fund to the employee are still considered made by the employer
- Most disability payments (other than state statutory plans) count as hours of service if the employee has not been terminated from employment
  - **Includes STD and LTD**—even where benefit payments made by carrier

Excluded From Hours of Service

- Workers' compensation payments
- Unemployment payments
  - State disability payments (or voluntary replacements to comply with state STD requirements)
  - California SDI
  - California Voluntary Plan
- Statutory disability plans (or private replacements) in Hawaii, New Jersey, New York, and Rhode Island
- Disability plan payments made from arrangements to which the employer did not directly or indirectly contribute
  - Requires that the premium was exclusively paid by employee after-tax contributions to qualify

The ACA's Employer Mandate "Pay or Play" §4980H Penalties

§4980H(a)—The "A Penalty" Aka: The "Sledgehammer Penalty"

- **Failure to offer MEC to at least 95% of all full-time employees (and their children to age 26)**
- The A Penalty is triggered by at least one such full-time employee who is not offered MEC enrolling in subsidized exchange coverage
  - **2024 A Penalty liability is $2,970 annualized ($247.50/month) multiplied by all full-time employees**
    - **30 full-time employee reduction from multiplier**

§4980H(b)—The "B Penalty" Aka: The "Tack Hammer Penalty"

- Applies where the employer is not subject to the A penalty
- **Failure to:**
  1. **Offer coverage that's affordable;**
  2. **Offer coverage that provides MV; or**
  3. **Offer MEC to a full-time employee (where employer offers at a sufficient percentage to avoid A Penalty liability)**
- The B Penalty is triggered by any such full-time employee enrolling in subsidized exchange coverage
- 2024 B Penalty liability is $4,460 annualized ($371.67/month) multiplied by each such full-time employee who enrolls in subsidized exchange coverage
  - Note that although the B Penalty amount is higher ($4,460 vs. $2,970), the multiplier is generally much lower (only those full-time employees not offered affordable/minimum value coverage who enroll in subsidized exchange coverage)

The ACA's Employer Mandate "Pay or Play" §4980H Penalties

§4980H(a)—The "A Penalty" Aka: The "Sledgehammer Penalty"	§4980H(b)—The "B Penalty" Aka: The "Tack Hammer Penalty"
Simplified Version	**Simplified Version**

• To avoid the "A Penalty" **must offer MEC to at least 95% of full-time employees and their children to age 26**
• **2024 A Penalty liability is $2,970 annualized ($247.50/month)** multiplied by all full-time employees (reduced by first 30)
	• To avoid the "B Penalty", the offer of MEC must:
	  • **Be affordable; and**
	  • **Provide minimum value (MV)**
	• **2024 B Penalty liability is $4,460 annualized ($371.67/month)** multiplied by each such full-time employee who enrolls in subsidized exchange coverage

04

The ADA

No Right to Continue Active Coverage

ADA Leave–No Right to Continue Active Coverage

EEOC FMLA/ADA Fact Sheet FAQ, Q/A-15

https://www.eeoc.gov/policy/docs/fmlaada.html

15. Q: Do the ADA and the FMLA require an employer to continue an employee's health insurance coverage during medical leave?

A: Under the ADA, an employer must continue health insurance coverage for an employee taking leave or working part-time **only if the employer also provides coverage for other employees in the same leave or part-time status.** The coverage must be on the same terms normally provided to those in the same leave or part-time status. (emphasis added).
Under the FMLA, an employer always must maintain the employee's existing level of coverage (including family or dependent coverage) under a group health plan during the period of FMLA leave, provided the employee pays his or her share of the premiums. An employer may not discriminate against an employee using FMLA leave, and therefore must also provide such an employee with the same benefits (e.g., life or disability insurance) normally provided to an employee in the same leave or part-time status.

Health Coverage Terminates (Even Though Employment Does Not)

- The employee may not be terminated from employment until after exhausting protected leave rights and/or the ability to continue coverage through a company leave policy
  - Could take over a year to determine whether the employer is able to make an appropriate reasonable accommodation for a disabled employee (or if that would create an undue hardship)
- **ADA does not come with any requirement to continue health coverage (unlike FMLA, CFRA, PDL, or another state equivalent)**
- Health coverage will generally terminate after the protected leave period (if any) and company leave policy for coverage has ended—and the employee will have COBRA rights
  - Loss of coverage caused by reduction in hours or failure to return from FMLA leave

Wrap-up

Takeaways

Health Benefits While on Leave

Three Key Points to Remember

1	Employees on protected leave under FMLA, CFRA, or PDL (or another state equivalent) must have the option to continue active coverage at the active employee-share of the premium. There are three methods for collecting payment. COBRA rights apply upon failure to return.
2	For non-protected leaves, the default approach would be to terminate active coverage (and offer COBRA). However, many employers have a leave policy to extend active coverage for some period where no protected leave is available, or after the protected leave period expires. Be careful to coordinate this approach with the insurance carriers or stop-loss providers.
3	Applicable Large Employers subject to the ACA pay or play rules will need to pay particularly close attention to avoid potential tax penalty liability if they utilize the look-back measurement method to determine employees' full-time status. And don't forget that ADA leave is not protected leave for coverage purposes—even if the employee has not been terminated from employment.

Content Disclaimer

Health Benefits While on Leave

The intent of this analysis is to provide the recipient with general information regarding the status of, and/or potential concerns related to, the recipient's current employee benefits issues. This analysis does not necessarily fully address the recipient's specific issue, and it should not be construed as, nor is it intended to provide, legal advice. Furthermore, this message does not establish an attorney-client relationship. Questions regarding specific issues should be addressed to the person(s) who provide legal advice to the recipient regarding employee benefits issues (e.g., the recipient's general counsel or an attorney hired by the recipient who specializes in employee benefits law).

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Thank you

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