Chapter 7 — Leave of Absence

701 Definition of a Leave of Absence

Wis. Stat. § 40.02 (40) "Leave of absence" means any period during which an employee has ceased to render services for a participating employer and receive earnings and there has been no formal termination of the employer−employee relationship.

A return from a leave of absence under Wis. Stat. § 40.02 (40) is deemed to be the first day the employee returns to work if the employee resumes active performance of duty for 30 consecutive calendar days for at least 50% of the employee's normal work time. If the employee does not complete 30 consecutive calendar days of duty, the employee is not deemed to have returned from leave and coverage will continue as an employee on leave of absence.

702 Coverage Does Not Lapse While on a Leave of Absence

Insured employees on an unpaid leave of absence (LOA) choose whether to continue health insurance coverage during their LOA. Employee coverage remains active as long as premiums are paid when due.

The following applies to employees continuing their coverage during an approved LOA:

- The maximum length of time coverage can be continued for an employee on LOA is 36 months. After 36 months or upon termination, whichever occurs first, the employee may continue coverage under continuation coverage (COBRA) regulations. (Refer to Chapter 9 for information on COBRA.)
- Employer contributions made toward premium payment while an employee is on a LOA is at the discretion of the employer.
- Regardless if the employee is paying the entire premium or an employee share, premiums must be paid in advance of the coverage month. This can be done by either a deduction from the last payroll check or by direct payment to the employer,

e.g., personal check. Again, the employer must receive premium payments in advance of the coverage month.

- Employees on a LOA remain active on the employers invoice. Employers will be billed the premiums on their monthly invoice for each respective coverage month the employee remains on a LOA. Payments received from an employee on a LOA are to be made payable to the employer.
- Employers must provide It's Your Choice information to employees on a LOA prior to the beginning of the designated It's Your Choice Open Enrollment period.
  - An employee on a union-service leave may continue coverage beyond 36 months until termination of the leave or the date that service with that labor organization ceases, whichever occurs first.
  - Employees continuing coverage while on LOA are not required to complete a *Health Insurance Application/Change Form* (ET-2301) upon return to work.

703 Coverage Lapses While on a Leave of Absence

Insured employees on an unpaid leave of absence (LOA) can choose to allow their health insurance coverage to lapse during their LOA. An employee may choose to allow their coverage to lapse by not paying the premium when due. If the employee files an application to cancel coverage they are not eligible to enroll upon return to work; the coverage must lapse, not be terminated voluntarily.

Employee allowed their health insurance coverage to lapse while on an approved LOA. The following applies upon returning to work and the employee chooses to reinstate coverage:

- Employee must complete and submit an application to their employer within 30 days after returning to work to enroll in coverage. Coverage is effective the first of the month following the employer's receipt of the completed application.
- The employee is limited to the same health plan and level of coverage they were enrolled in prior to their LOA. See the three bullet points that follow for exceptions to this requirement.
  - Employee may change coverage level if a qualifying event occurred during their LOA (e.g. marriage, birth, etc.). Refer to Chapter 4, subchapter 403 for information about other enrollment opportunities.
  - Employee who moved while on a LOA may change health plans upon return to work.
  - Employee who returns from a LOA that encompassed the entire previous It's Your Choice Open Enrollment period and files an application within 30 days of returning to work, may make changes to the coverage they had prior to their LOA.
- Employee who did not file an application within 30 days of returning to work cannot

re-enroll in coverage until the next It's Your Choice Open Enrollment period or when a qualifying event occurs (e.g. marriage, birth, etc.), whichever occurs first. Refer to Chapter 4, subchapter 403 other enrollment opportunities.

- The coverage effective date for employees returning from military leave or Family Medical Leave of Absence (FMLA) is the date the employee returns to work provided an application is filed with the employer within 30 days of returning to work. A full month's premium is due for that month if coverage is effective before the 16th of the month. If coverage is effective on the 16th or later, the entire premium is waived for that month.

704 Coverage During Layoff

A. The following apply to employees on layoff status who do not allow health insurance coverage to lapse. Coverage may be continued during layoff with the following conditions:

- Employer contributions toward premium payment during layoff are at the discretion of the employer.
- Coverage may be continued for up to 36 months while an employee is on layoff status.
- Premiums, whether the entire monthly premium or the employee share, must be paid by the employee in advance of the coverage month. Premium payment can be either by deduction from the last payroll check or by direct payment to the employer, e.g., by personal check.
- Employees on layoff are included on the employer's monthly invoice along with active employees and employees on LOA. Any payments received from employees on layoff should be made payable to the employer and included in your monthly premium remittance to ETF.
- Employees on layoff during an entire It's Your Choice Open Enrollment period must be given an It's Your Choice opportunity. It's Your Choice information should be sent to those employees who are on layoff prior to the beginning of the designated It's Your Choice Open Enrollment period.
- Employees who do not allow their coverage to lapse while on layoff status are not required to complete a *Health Insurance Application/Change Form* (ET-2301) upon their return to work.

B. The following apply to employees on layoff status who allow health insurance coverage to lapse and choose to reinstate coverage upon return to work:

- The employee must submit a *Health Insurance Application/Change Form* and is limited to the same health plan and level of coverage as before the layoff. The application must be received within 30 days of the employee's return to work. Coverage is effective the first of the month following the employer's receipt of the completed *Health Insurance Application/Change Form*. After 30 days, enrollment is limited to the It's Your Choice Open Enrollment period or if there is another qualifying event that occurs (e.g., marriage, birth, etc.).

- The employee may change level of coverage only if a special enrollment opportunity (e.g., marriage, birth, etc.) occurs during the layoff. (Refer to Chapter 4, subchapter 403 for information about special enrollment opportunities.)
- Employees moving to a different health plan service area during a layoff may change health plans.
- An employee who returns from a layoff that encompassed the entire previous It's Your Choice Open Enrollment period will be allowed an open enrollment opportunity provided an application is filed with the employer within 30 days of the employee's return to work.

705 Coverage During Appeal of Discharge

An insured employee appealing an employment discharge may continue to be insured from the date of the contested discharge until a final decision is made. The following apply:

- The employer must receive the first premium payment within 30 days of discharge.
- Future premium payments must be made through the employer and must be received in advance of the coverage month.
- The employee must pay both the employee and employer share of premium due each month until the appeal is resolved.
- The employee must continue to be reported along with active employees on the employer's monthly invoice. Any payments received from employees appealing a discharge should be made payable to the employer and included in the employer's monthly premium remittance to ETF.

In the event the appeal is decided in favor of the employee and the employee is made whole (as if the discharge did not occur), the employer must reimburse the employee for all employer shares of premiums paid by the employee during the course of the appeals process. The employer is not required to return the employer share in cases where the employee is not made whole but returns to work under the terms of the final agreement.

In the event an appeal reinstates an employee who allowed coverage to lapse during the appeal, the employee may reinstate coverage provided the employee re-applies for coverage within 30 days of the return to work.

If the final decision is adverse to the employee, the date of termination shall, for purposes of health care coverage, be the end of the month in which the decision becomes final.

If the discharge is for reasons other than gross misconduct, the employee is eligible to continue health insurance for the balance of 18 months from the original termination date (the balance of the continuation period). If the discharge is for gross misconduct, the employee is eligible for conversion coverage and should contact the health plan for information on benefits, rates and policy provisions. (Refer to Chapter 9 for information about continuation and conversion.) In either case, a *Continuation-Conversion Notice* (ET-2311) must be provided to the employee using the original discharge date.