

**Department of Employee Trust Funds
State Agency Health Insurance Administration Manual**

Chapter 7 — Leave Of Absence

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701 Definition of a Leave of Absence

Wis. Stat. § 40.02 (4) “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 leave of absence (LOA) is not deemed ended or interrupted by reason of resumption of active duty until the employee has resumed active performance of duty for 30 consecutive calendar days for at least 50% of what is considered that employee’s normal work time with that employer. An employee on LOA is subject to the same eligibility and enrollment provisions as an active employee.

702 Employer Contribution Toward Health Insurance Premium While on an Unpaid Leave of Absence

Wis. Stat. § 40.05 (4) (a) 3., requires that “[t]he employer shall continue to pay required employer contributions toward the health insurance premium of an insured employee while the insured employee is on a leave of absence, as follows:

- (a) Only for the initial three months of the leave of absence, except as provided in subd. 3b.
- (b) Unless otherwise provided in the compensation plan under s. 230.12, for the entire leave of absence if the insured employee is receiving temporary disability compensation under s. 102.43.”

Note: Employee also receives the employer contribution toward health insurance premium that was prepaid prior to going out on a LOA in addition to receiving the employer contribution for the initial three months following any prepaid month. For example, an employee goes on a LOA effective September 1. The employer and employee premium has been paid one month in

advance. The employer paid premium will continue for the months of October, November and December.

703 Coverage During an Unpaid Leave of Absence (Non Military) - 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.

- A. Employee returns to active performance of duty and their LOA ends **within the first four months** after beginning a LOA. The following applies to employees returning to active performance of duty:
- No application is required upon resumption of active duty.
 - Employer must track when the employee meets the criteria of a LOA ending under § 40.02 (40).
 - Employer must set the expectation with the employee regarding when a LOA ends and the use of leave time.
 - Employee cannot use leave time to satisfy the criteria ending a LOA under § 40.02 (40)
 - Leave time cannot be used to satisfy the 50% return to work criterion, but this does not prevent an employee from using leave time to supplement their work schedule.
 - Employer deducts employee-required premium contribution from employee's check.

Example:

- Employee goes out on a LOA January 15.
 - Employee eligible for employer contribution toward the health insurance premium for the prepaid coverage month of February plus March, April and May under Wis. Stat. § 40.05 (4) (a) 3.
 - Employee returns to active performance of duty on April 1.
 - LOA ends May 1, upon completing the criteria under Wis. Stat. § 40.02 (40).
 - Employee continues to receive the employer contribution toward the health insurance premium for the coverage month of May.
- B. Employee returns to active performance of duty and the LOA ends **more than four months** after beginning the LOA. The following applies to employees returning to active performance of duty:
- No application is required upon resumption of active duty.
 - Employer must track when the employee meets the criteria of a LOA ending under § 40.02 (40).
 - Employer must set the expectation with the employee regarding when a LOA

ends, the use of leave time, and when they will become eligible for the employer contribution toward the health insurance premium.

- Employee cannot use leave time to satisfy the requirements ending a LOA under § 40.02 (40).
- Leave time cannot be used to satisfy the 50% return to work criterion, but this does not prevent an employee from using leave time to supplement their work schedule.
- The employee becomes eligible for the employer contribution toward the health insurance premium for the coverage month in which the LOA ended.
- Employer deducts or collects the full monthly premium from the employee until the LOA ends. Employee receives a refund of any employer contribution paid by the employee for the month in which the LOA ended.

Example:

- Employee goes out on a LOA October 2.
- Employee eligible for employer contribution toward the health insurance premium for the prepaid coverage month of November plus December, January and February under Wis. Stat. § 40.05 (4) (a) 3.
- Employee pays full premium, no employer contribution, beginning with the coverage month of March.
- Employee returns to active performance of duty on March 20.
- LOA ends April 19; Wis. Stat. § 40.02 (40).
- Employee is eligible for the employer contribution toward the health insurance premium for the coverage month of April, the month the employee's LOA ends.
- Since the total premium has been paid by the employee prior to the coverage month of April, the employee is due a refund of the employer contribution toward the health insurance premium.

C. Additional information regarding employees continuing health insurance 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), coverage may be continued under continuation coverage (COBRA) regulations. (Refer to Chapter 9 for information about COBRA.)
- Premiums must be paid by the employee in advance, either by deduction from the last payroll check or by direct payment to the employer. Employers must receive premium payments in advance of the coverage month.
- The State contribution toward premium payment continues for the initial three months of the LOA for which premiums have not already been deducted as of the date the LOA begins. This will result in a total of up to four months (after the LOA begins) of employer contribution towards premiums. For the remaining months of the LOA, the employee must pay the entire premium; there is no employer contribution after the initial three months.

- Employees on LOA are included along with active employees on the employer's monthly invoice. Any payments received from employees on LOA should be made payable to the employer and included in the employer's monthly invoice payment to ETF.
- Employers must provide It's Your Choice information to employees on 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 the labor organization ceases, whichever occurs first.

704 Coverage During an Unpaid Leave of Absence (Non Military) - 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.

- A. Employee allowed their health insurance coverage to lapse while on LOA. The following applies upon returning to active performance of duty:
- Employee must complete and submit an application to the employer within 30 days after resumption of active performance of duty to enroll in coverage.
 - Employee must indicate coverage to be effective "As Soon As Possible" or "When the Employer Contributes toward Premium" on the application.
 - Employee elects "As Soon As Possible" – coverage is effective the first of the month on or following the employer application receive date.
 - Employee becomes eligible for the employer contribution toward the health insurance premium for the coverage month the LOA has ended.
 - Employer will deduct or collect the full monthly premium from the employee until the LOA ends. Employee receives a refund of any employer contribution paid by the employee for the month in which the LOA ended.
 - Employee elects "When the Employer Contributes toward Premium" – coverage is effective the first of the month on or following when the employee becomes eligible for the employer contribution toward the monthly premium.
 - Employer must track when the employee meets the criteria of a LOA ending under § 40.02 (40).
 - Employer must set the expectation with the employee regarding when a LOA ends, the use of leave time, and when they will become eligible for the employer contribution toward the health insurance premium.
 - Employee cannot use leave time to satisfy the criteria ending a LOA under § 40.02 (40).

Leave time cannot be used to satisfy the 50% return to work criterion, but this does not prevent an employee from using leave time to supplement their work schedule.

Examples:

- Employee elects coverage to be **effective as soon as possible**:
 - Employee goes out on a LOA June 10.
 - Employee eligible for employer contribution toward the health insurance premium for the prepaid coverage month of July plus August, September and October. Coverage ends/lapses October 31.
 - Employee returns to active performance of duty on February 1.
 - Employee submits an application to enroll in coverage that is received by the employer on February 1. Employee elects coverage to be effective as soon as possible.
 - Coverage is effective February 1.
 - LOA ends March 3; Wis. Stat. § 40.02 (40).
 - Employee must pay the entire premium for the coverage month of February.
 - Employee is eligible for the employer contribution toward the health insurance premium for the coverage month of March, the month the employee's LOA ends.
 - Since the total premium has been paid by the employee prior to the coverage month of March, the employee is due a refund of the employer contribution toward the health insurance premium.

- Employee elects coverage to be **effective when the employer contributes** toward premium:
 - Employee goes out on a LOA June 10.
 - Employee eligible for employer contribution toward the health insurance premium for the prepaid coverage month of July plus August, September and October. Coverage ends/lapses October 31.
 - Employee returns to active performance of duty on February 1.
 - Employee submits an application to enroll in coverage that is received by the employer on February 1. Employee elects coverage to be effective when the employer contributes toward premium.
 - LOA ends March 3; Wis. Stat. § 40.02 (40).
 - Employee becomes eligible for the employer contribution toward premium on March 3.
 - Coverage is effective April 1, first of the month on or after becoming eligible for the employer contribution toward premium.
 - Employee is only required to pay the required employee share of the monthly premium for the coverage month of April going forward.

- Additional information regarding employees whose health insurance coverage lapsed during an approved LOA:
 - The employee may change level of coverage if a status change (e.g., marriage, birth, etc.) occurred during the LOA. (Refer to Chapter 4, subchapter 403 for information about other enrollment opportunities.) Employees may change health plans if the change results from a move to a different county during the LOA.
 - An employee who allows coverage to lapse and returns from a LOA that encompassed

the entire previous It's Your Choice Open Enrollment period will be allowed an It's Your Choice enrollment opportunity provided an application is filed with the employer within 30 days of the employee's return to active performance of duty.

- 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 the employee's return to work. A full month's premium is due for that month if coverage is effective before the 16th of that month. Otherwise, the entire premium for that month is waived.

The following are examples of situations of FMLA that may be encountered:

- FMLA spans the end of one calendar year and continues into the next year (twelve weeks of one year ending December 31st and twelve weeks beginning January 1st of the next year): The effective date is the date the employee returns to work, as long as it is not beyond the allowable twelve weeks for the current calendar year.
Note: FMLA is based on a calendar year and cannot exceed a twelve-week period in any given calendar year.
- An employee on FMLA exceeds the twelve-week calendar year limit and elects to continue the leave using leave without pay: The effective date of the employee's reinstatement in the Group Health Insurance Program is the first of the month on or after the employer's receipt of the employee's health insurance application after completing 30 consecutive calendar days for an accumulation of hours of at least 50% of their appointed employment.

705 Coverage During Military Leave

Wisconsin Act 162 (enacted March 17, 2004) provides a framework for insuring that certain employees serving in the uniformed services are treated, for purposes of pay and benefits, as though no interruption of service occurred. Under this act, employees may continue health insurance coverage while on military leave, if they so desire, including employer-paid premiums and employee-paid premium payroll deductions.

Employees not remaining on payroll while on military leave must make employee-paid premium share contributions directly to the employer. Wis. Stat. § 230.315, created by Act 162, lists three criteria to be met by a state employee activated to serve on military duty in order to receive pay differential, accrue sick leave and paid annual leave, and receive other employee benefits as though no interruption of service occurred:

1. Be activated to serve on military duty or in the U.S. Public Health Service, other than for training purposes, on or after January, 1, 2003; and
2. Serve as a member of the Wisconsin National Guard, a reserve component of U. S. armed forces, or recalled to active military duty from inactive reserve status; and
3. Receive a military leave of absence under Wis. Stat. § 230.32 (3) (a) or 230.35 (3), under a collective bargaining agreement, under rules promulgated by the Office of State Employment Relations, or be eligible for reemployment under the provisions of Wis. Stat. § 45.50.

The employee or designated representative may elect within 60 days after being activated to receive benefits resulting from this legislation by completing the *Health Insurance Election for Military Service Personnel* (ET-2350). The employer must receive this form within 60 days after the employee is activated.

Employees who prefer to rely solely on military provided health care and family health insurance may elect to cancel state coverage. Upon release from active duty, return to employment and within 30 days of the loss of the military coverage—loss of coverage is defined as an “event”—the employee may reinstate their state health insurance coverage (same health plan and same coverage level) without prejudice by filing a *Group Health Insurance Application* (ET-2301). The coverage effective date is the day following the last day of the military coverage. Employees who are not eligible for the employer premium share when called to active duty, but who become eligible while on military leave, have 30 days from the date of their return to employment to file a health insurance application.

706 Coverage During Layoff

Coverage may be continued during layoff with the following conditions:

- The state contribution is available for the first three months of layoff for which premiums have not already been deducted. After that, the employee is responsible for the entire premium.
- Employee may continue coverage for up to five years using converted sick leave to pay premiums until the sick leave credits are exhausted followed by 36 months under continuation provisions. In the event that sick leave conversion credits are used, the full amount of the required employee premiums is deducted from the credits until the credits are exhausted, the employee is re-employed, or five years elapse from the date of the layoff. The use of sick leave during layoff is the record-keeping responsibility of the employer. The employee is reported to ETF the same as any other employee on layoff who is continuing their coverage. (For more information on sick leave, refer to Chapter 12 - Accumulated Sick Leave Conversion Credits.)
- Premiums must be paid in advance, either by deduction from the last paycheck or by direct payment to the employer. Payments must be received by the employer prior to the period of coverage.
- Employees on layoff are reported along with your 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 remittance to ETF.
- If an employee is on layoff during an entire It's Your Choice Open Enrollment period, the employee 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.

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 *Group Health Insurance Application* (ET-2301) 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 *Group Health Insurance Application*. After 30 days, enrollment is limited to the It's Your Choice Open Enrollment period or if there is another qualifying event that occurs.

- 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.

707 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.

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.) A *Continuation-Conversion Notice* (ET-2311) must be provided to the employee using the original discharge date.