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# ALL “GROUP HEALTH BENEFITS” MUST BE AVAILABLE TO EMPLOYEES ON FAMILY AND MEDICAL LEAVE

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Under the Family and Medical Leave Act (FMLA), employers are required to allow employees to continue receiving benefits under a “group health plan” while out on a FMLA leave of absence. However, other benefits can be suspended, provided that coverage is restored without any waiting period upon the employee’s return to work. It has long been believed that this meant that only the employee’s medical insurance had to be maintained and other benefits, such as dental or optical insurance, could be suspended. That was the position a school district took, but the union disagreed. Now, the U.S. Department of Labor (DOL) has weighed in, and its answer has surprised many.

When both the school district and union asked the DOL for an opinion letter regarding the “other benefits” issue, it looked to the Internal Revenue Code’s definition of the term “group health plan.” That definition broadly included any plan of, or contributed to by, an employer to provide healthcare to current or former employees or their families, including plans that are self-insured. Since the school district paid a percentage of the treatment cost for dental care, including diagnostic and preventive oral services, endodontics, periodontics and basic dental services, the dental plan was found to fall within the broad definition of “group health plan.”

The DOL explained that, under FMLA, there is a limited exception to the term if:

- The employer made no contribution to the plan;
- Participation in the program by employees was completely voluntary;
- The sole function of the employer, with regard to the plan, was to allow the insurer to seek employee enrolments, and collect and remit premiums;
- The employer received no more than reasonable consideration for administrative costs; and
- Premiums did not increase when employment terminated.

Therefore, the DOL found that the school district’s employees had to be allowed to continue their dental insurance while on FMLA leave. In addition, since the school district provided coverage for employees for each school year for a full 12 months, including summer break, coverage had to be maintained even when the employee’s 12-week leave continued into the summer break.

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