

WHAT YOU NEED TO KNOW



How to Handle Benefits When an Employee is on Leave

Employers often have questions about what benefits they must maintain for employees who go on leave. Whether an employer must maintain a particular benefit will depend on a variety of factors, including the type of leave, the employer’s written policy, and federal and state laws.

This chart lists common types of leave and focuses on federal laws. Please be aware that if an employee loses coverage, then federal COBRA or state continuation laws may apply. An employer should consult with its attorney on state and local laws that may also apply.

Type of Leave	Employer is required to maintain the benefit	Employer is not required to maintain the benefit, but may maintain it by policy
General paid time off (PTO)	If the employer is an applicable large employer, then medical coverage must be offered during a full-time employee’s stability period (if the employer uses the lookback measurement method).	Depending on the employer’s written policy, all benefits (or some benefits) may be maintained. However, if the employer is an applicable large employer, then medical coverage must be offered during a full-time employee’s stability period.
Family and Medical Leave Act of 1993 (FMLA)	Under the FMLA, the employer is required to maintain all group health plans, including a medical plan, dental plan, vision plan, prescription drug plan, health flexible spending arrangement (FSA), and employee assistance plan (EAP) if the EAP provides medical care.	Under the FMLA, the employer is not required to maintain group term life insurance plan, accidental death and dismemberment (AD&D) plan, disability insurance plan, dependent care assistance program (DCAP), individual insurance policies meeting certain safe harbor requirements (certain voluntary employee-pay-all plans), and health savings account (HSA) contributions.

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Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)	<p>Under USERRA, an employee may elect to continue health coverage, but the employer is not required to offer service members more generous continuation benefits even if the employer provides more generous continuation benefits for employees on other comparable leaves of absence.</p> <p>If a person's health plan coverage would terminate because of an absence due to military service, the person may elect to continue the health plan coverage for up to 24 months after the absence begins or for the period of service (plus the time allowed to apply for reemployment), whichever period is shorter.</p> <p>While on USERRA leave, the employee must have the same non-seniority rights and benefits (for example, life insurance, disability insurance, etc.) as are generally provided under the employer's policies to employees with similar seniority, status, and pay who are on other leaves of absence. USERRA's non-seniority rights provisions do not apply to health plans.</p>	<p>Under USERRA, an employer is not required to offer service members more generous health plan coverage even if the employer does so for employees on other, comparable leaves of absence.</p>

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Americans with Disabilities Act of 1990 (ADA) and the ADA Amendments Act of 2008	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.	Depending on the employer's written policy, all benefits (or some benefits) may be maintained. However, if the employer is subject to the ADA and offers health coverage to other employees in the same leave or part-time status, then the health coverage must be on the same terms normally provide to those on the same leave or part-time status.
Workers' compensation	Workers' compensation for non-federal employees is governed by state law.	Workers' compensation for non-federal employees is governed by state law.
Jury duty	Under federal law, employees on jury duty are entitled to participate in insurance or other benefits offered by the employer according to the employer's established leave of absence rules and practices in effect when the employee started jury service.	Depending on the employer's written policy, all benefits (or some benefits) may be maintained. However, if benefits are maintained under employer's policies for other leaves of absence, such benefits must be maintained for employees on jury duty.
Pregnancy Discrimination Act of 1978 (PDA)	Under the PDA, if the employer provides any benefits to employees on medical leave, the employer must provide the same benefits for those on medical leave for pregnancy-related conditions. Employees with pregnancy-related disabilities must be treated the same as other temporarily disabled employees for items such as accrual and crediting of seniority and temporary disability benefits.	Depending on the employer's written policy, all benefits (or some benefits) may be maintained. However, if an employer is subject to the PDA, it must provide the same continuation of benefits for employees with pregnancy-related conditions as are provided to similarly situated employees that are on medical leave or are temporarily disabled.

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Type of Leave	Employer is required to maintain the benefit	Employer is not required to maintain the benefit, but may maintain it by policy
Layoff	If the employer is an applicable large employer and an employee is laid off during a stability period (not terminated) and is considered full time, then medical coverage must be offered during the layoff.	Depending on the employer's written policy, all benefits (or some benefits) may be maintained.

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