



January 10, 1994

FMLA-25

Dear *Name**,

This is in response to your inquiry regarding the application of the Family Medical Leave Act of 1993 (FMLA) to long term disability insurance policies.

FMLA provides that "eligible" employees may take up to 12 workweeks of job protected leave in any 12 month period for the birth or placement of a child for adoption or foster care; to care for a child, spouse or parent with a serious health condition; or for the employee's own serious health condition that makes the employee unable to work. To be "eligible" under FMLA, an employee must have worked for the employer for at least 12 months and for at least 1,250 hours in the previous 12 months, and must work at a location where the employer employs at least 50 employees within 75 miles. Employers covered by the law are required to maintain an eligible employee's group health benefits during FMLA leave under the same conditions as coverage would have been provided if the employee had worked continuously during the leave.

In addition, the use of FMLA leave cannot result in an employee losing any employment benefit that accrued before the start of the employee's leave. Accordingly, upon return from FMLA leave, the employee is entitled to be restored to the same employment position which the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. "Equivalent benefits" under FMLA means that benefits must be resumed when an employee returns from leave in the same manner and at the same levels as were provided when the leave began, without any requirement that the employee re-qualify for any benefits which the employee enjoyed before the start of the leave (e.g., without any qualifying period, physical examination, exclusion of pre existing conditions, etc.). Thus, in some cases, it may be advantageous for an employer to elect to maintain other benefits in addition to group health benefits, such as life insurance, disability insurance, etc., by paying the employee's share of premiums during periods of FMLA leave to ensure that the employer can meet the statutory responsibility to provide equivalent benefits when the employee returns from leave. The employer is entitled in such cases to recover the premium paid on the employee's behalf to maintain benefits coverage during the FMLA leave period.

You asked how the foregoing provisions would apply to an employee who has satisfied the pre existing conditions limitation period for a particular condition, and is not considered to have a preexisting condition when the employee commences FMLA leave. While on leave, the employee has no disability coverage and suffers from an entirely different condition. Upon return from leave, you question whether a new pre existing conditions limitation period for that particular condition can be imposed.

Under FMLA, an eligible employee must be fully restored upon return from FMLA leave to the same benefits coverage and may not be required to meet any qualifications requirements imposed by the plan to re-qualify for any benefits the employee enjoyed before the FMLA leave began, such as any new pre existing condition waiting period. (See 29 CFR 825.215(d)(1).)

Secondly, you asked how FMLA would address an employee who had only partially satisfied the pre existing conditions limitation period for a particular condition, took leave, then suffered from a separate condition. Could a new pre existing conditions limitation period be imposed for the new condition, or would the employee receive partial credit for both conditions for the amount of time satisfied prior to starting the leave? An employee who has partially satisfied the pre existing conditions limitation period prior to commencing FMLA leave need only satisfy the remainder upon return from leave. A new pre existing conditions limitation period could not be imposed in the example you cited. The employee must receive partial credit toward both conditions for the amount of time satisfied prior to starting the leave.



Because the taking of FMLA leave cannot result in the loss of any employment benefit accrued prior to the date on which the leave commenced, plans may not impose new pre existing conditions limitation periods or "start the limitation period clock ticking again" after each FMLA leave as you suggested in your letter.

Sincerely,

Maria Echaveste
Administrator

** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).*