

Employee Benefits Report

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Pregnancy and Maternity: Avoid Costly Discrimination Claims

Women comprised 46.8 percent of the total U.S. labor force in 2010, according to the U.S. Department of Labor. Many of these working women will become pregnant at least once during their careers. Improper handling of pregnancy, pregnancy-related disability and maternity leave can lead to discrimination lawsuits. Do you know the laws that apply?



The Pregnancy Discrimination Act prohibits employment discrimination on the basis of pregnancy, childbirth or related medical conditions. The law affects employers with 15 or more employees, including state and local governments, as well as employment agencies, labor organizations and the federal government.

The law requires employers to treat women who are pregnant or affected by pregnancy-related conditions in the same manner as other applicants or employees with similar abilities or limitations. An employer cannot

This Just In...

Fifty-one percent of working women who had their first birth between 2006 and 2008 received paid leave (i.e. maternity leave, sick leave, vacation), compared with 42 percent between 1996 and 2000, according to a report by the U.S. Census Bureau, "Maternity Leave and Employment Patterns of First-Time Mothers: 1961-2008."

"The last three decades have seen major changes in the work patterns of expectant mothers," said Lynda Laughlin, a family demographer at the Census Bureau. "Access to paid leave makes it possible for mothers to care for their newborns and maintain financial stability."

The likelihood that a mother has access to paid leave varies with age, hours worked and education. About 24 percent of women under age 22 used paid leave compared with 61 percent of women 25 and older. Full-time workers were more likely to use paid-leave benefits than part-time workers (56 percent and 21 percent, respec-

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refuse to hire a pregnant woman because of pregnancy, a pregnancy-related condition, or the prejudices of co-workers, clients or customers. Pregnant employees must be permitted to work as long as they are able to perform their jobs. An employer also cannot have a rule prohibiting an employee from returning to work for a predetermined length of time after childbirth.

Handling Pregnancy-Related Disabilities

If an employee is temporarily unable to perform her job because of her pregnancy, the employer must treat her the same as any other temporarily disabled employee. For example, if the employer allows temporarily disabled employees to modify tasks, perform alternative assignments or take disability leave or leave without pay, the employer also must allow an employee who is temporarily disabled because of pregnancy to do the same.

If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth. However, if an employer requires employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements.

Employers must hold open a job for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave.

Maternity Leave

No federal law requires employers to provide paid maternity leave. The Family and Medical Leave Act (FMLA) covers employees at companies with 50 or more workers and applies to employees who have been with the employer for at least one year and have worked for at least 1,250 hours over the course of that previous year. The FMLA allows eligible employees to take up to 12 weeks of unpaid leave for the birth and care of their child, or for their (or a close family member's) serious health conditions. It also guarantees that the employee's job, or an equivalent job, will be available if she returns to work immediately after her leave is up.

Some states have their own maternity leave laws. Generally, where a state provides maternity leave, employees can "leave stack," or combine leave under different programs. Eight states (California, Connecticut, Louisiana, New Jersey, Oregon, Rhode Island, Tennessee and Washington) and the District of Columbia require employers to offer maternity leave.

No state or federal law requires paid maternity leave; however, Con-

tively). Women who have not graduated from high school are less likely to have paid maternity leave as women who have graduated from college.

For more information on maternity leave and other pregnancy-related employment issues, please see the article on this page.

necticut, Hawaii, Washington and Wisconsin allow employees to use accrued sick leave to care for a healthy new baby. Several other states, including California, Hawaii, New Jersey, New York and Rhode Island provide paid leave for women temporarily disabled due to pregnancy or childbirth through short-term disability programs. California's law also allows women with normal childbirths to collect partial payment. Most states require employers to continue benefits during leave; not every state requires employers to guarantee an employee's job will be available upon her return.

Health Insurance and Other Benefits

Employer-provided health insurance plans must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Your plan must pay pregnancy-related expenses exactly as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable and customary charges. Health plans cannot impose additional, increased or larger deductibles on pregnancy-related expenses.

The FMLA requires employers to continue health insurance and other benefits for employees as if they were still actively working; employees on leave still accrue seniority. Although the FMLA guarantees your employees' right to coverage while they are out on leave, once they exhaust FMLA leave, your group health, life or disability plan might not consider them active employees for the purposes of coverage. If your organization offers maternity or disability leave that is longer than required by the FMLA, check with your carrier to see whether it will consider covered employees still active after they exhaust FMLA leave. If the carrier does not, your employee may be able to continue health coverage through COBRA. If your organization's group life policy includes a waiver of premium provision, an employee on leave may be able to continue coverage if her leave was caused by a disability related to pregnancy (or any other cause).

Employment-related laws are complex and constantly changing. We can review your benefit plans and human resource policies to check for any possible compliance gaps. For information, please contact us. ■

Low-Cost Options Enhance Life Benefits

The year was 1911, the city was Passaic, New Jersey, and the company was the now-defunct Pantasote Leather Company. That's when and where the first group life insurance policy was issued.

The most common form of group life insurance is term life, which provides coverage for a specified period, usually one year or more. Term policies provide no further benefits when the term expires, and no buildup of cash value occurs. If this insurance is not renewed at the end of its term, coverage lapses and no payment is made to the beneficiary in the event of death.

Here are a few options available for enhancing your life insurance benefits:

Whole Life. Unlike term insurance, permanent life (or whole life) insurance provides protection for as long as the insured lives. Permanent life policies also have a savings component, building cash value that can help families weather financial emergencies, pay for special goals, or provide income for retirement years.

The annual premium for traditional whole life policies remains constant throughout the life of the policy. In earlier years, the premium is higher than the actual cost of the insurance, but in later years it becomes substantially lower. The excess amount of each premium in the early years is held in reserve as the policy's cash value. This cash value grows over time from investment earnings and future premium payments, providing funds the insured can borrow as a policy loan. If a policyholder decides to give up the insurance protection, he or she receives the cash value upon surrendering the policy, less any outstanding policy loans or surrender charges.

Please keep in mind that insurers individually underwrite whole life policies. This means that employees who want more than a minimal amount of whole life coverage (such as \$25,000) must complete a standard life insurance application, which is more comprehensive than a group insurance application. If an applicant has poor health, the insurer can decline to cover him or her. Insurers may offer higher amounts on a guaranteed-issue basis, without health questions, if negotiated in advance of enrollment. This offer may extend to employees' spouses and children.



Portability. Employees often can retain coverage after retirement by paying premiums directly to the insurer. Many policies also offer survivor benefits, usually continuing monthly payments to the spouse of an employee who dies before retirement; payments may extend for life or to the age at which Social Security retirement payments become available, but cease on remarriage.

Accelerated Benefits. To help ease the financial burden that often accompanies a serious illness, accelerated benefits allow terminally ill insureds (employees and spouses) with a life expectancy of six months or less to receive an advance payout of a percentage of their group life insurance face amount. Available to covered individuals with a minimum of \$10,000 in coverage, insureds may accelerate up to 50 percent of the face amount of their insurance, to a maximum of \$250,000.

Waiver of Premium. Also known as “continued protection,” this option waives premium payments for a disabled employee after a specified waiting period. Of group life policies in force in 2006, 94 percent, or 45 million, provided for waiver of premium in case of disability.

Will Preparation. To help insureds protect their assets and secure their families' financial future, this option covers the legal fees associated with preparing or updating a will, when insureds or their spouses use a participating attorney.

Adding options to your group life program can be a cost-effective way to enhance your benefits package. For more information, please contact us. ■

Do Your Benefits Communications Make the Grade?

If your employees are typical, fewer than 20 percent know how much you contribute each month toward their health insurance premiums. How can employees value their benefits if they don't know what they cost?

Surprisingly, most employees also don't know how much they themselves pay toward their own and their dependents' health insurance premiums. In a Kelton Research survey released in the fall of 2011, fewer than half of employees surveyed could say how much they contributed toward their employer-provided health insurance premiums. Slightly more than one-third (35 percent) knew what their plan's deductible was, and only one-third knew how much they had to pay toward dependent coverage.

You can improve these figures by taking time to review your benefits communications and decision-support system. Driving employees to the right plans increases employee satisfaction with benefits, and it can help contain healthcare costs for both your organization and your employees.

Historically, companies discuss healthcare benefits with employees before the annual "open enrollment" period (usually fall to January 1). These communications may cover legal compliance (and in best cases inform employees of their options), but it does little else to help lower costs and motivate employees. Creating a year-round, dynamic conversation between your company and employees can help you create a dialogue that moves the perception from "us against them" to "we're in this together."

In general, benefits communications are too complicated, prompting employees to either ignore them or put them aside in frustration. In 2005, Paul Boulis, a senior vice president with Blue Cross and Blue Shield of Illinois (BCBSIL), testified to the Advisory Council on Employee Welfare and Pension Benefit Plans. His statements summarize many of the problems with benefit communications. "Communication tools that overwhelm participants with information might not



provide answers to their most important and urgent questions....The disclosure document needed to fully explain the health plan design is lengthy and many plan participants do not have the time to read and study it. In addition, BCBSIL believes that a certain population responds better to personal explanations. Finally, when individuals are under stress due to a personal or family health issue, they want answers quickly."

The Kelton survey confirmed this, finding that one-quarter of employees with employer-based coverage reported never spending more than 30 minutes on reviewing their coverage options during open enrollment. That's too bad, because every year, an estimated 80 percent or more of employers revamp their benefit plans, but only 20 percent of employees make new elections. That means many are likely not selecting the options that are best for them and their families.

Improved communications may also reduce your workload considerably. A Gartner study found that HR organizations spend between 70 and 80 percent of their time dealing with administrative

activities. Often employees can deal with these activities online using a self-service HR portal, once they understand how to use it.

Here are some strategies for improving your benefits communications and making employees more satisfied with their benefits decisions:

Set goals: A benefits communications plan should include well-defined, measurable performance outcomes. For example, if you want to encourage the use of generic drugs, design your communications to inform employees about generics.

Define benefits within a broader context: Your communications should provide employees with information about benefit costs and their impact on company performance. They should specify what employees can do to help minimize the effects of cost increases on themselves and the company.

Engage management: Every employer should view the healthcare cost crisis as a business issue affecting profitability that should not be shouldered by the HR department alone. Management can help by working to define issues, encourage employee partnership and guide key behavior changes.

Make it relevant: Your communications should cover any or all of the following:

- * Benefit overviews and updates
- * Orientation, training and educational programs
- * Comparison charts
- * Legal updates
- * Provider directories

Make it accessible: Make your communications available through a number of channels:

- * Brochures and leaflets
- * Paycheck stuffers
- * Presentation materials
- * Newsletters
- * Online

Don't forget to get employee input—an employee survey can help you determine which communication methods and materials are most effective for the particular needs of your group. For help in making your benefits communications more effective, please contact us. ■



EVALUATION

Outstanding

Very Good

Satisfactory

Marginal

Unsatisfactory

How Does Your 401(k) Measure Up?

The Profit Sharing/401k Council of America's 54th Annual Survey of Profit Sharing and 401k Plans provides an in-depth look at current practices in profit-sharing and 401(k) plans.

Eligibility: Respondents reported that 89.0 percent of their U.S. employees were eligible to participate in their defined contribution plan. Nearly 60 percent of companies allow employees to start contributions immediately after hire.

Participation: An average of 86.3 percent of eligible employees have a balance in their employer's plan. A slightly lower percentage, 76.9 percent, made contributions during 2010, when permitted.

Automatic Enrollment: More than 40 percent of plans now have automatic enrollment, a dramatic increase over a few years ago. The most common default deferral is 3 percent of pay, and the most common default investment option is a target-date fund.

Company Contributions and Vesting: Company contributions to 401(k) plans averaged 2.3 percent of pay. 37.3 percent of plans provide immediate vesting for matching contributions; 23.3 percent provide immediate vesting for profit-sharing contributions.

Company Stock: 14.7 percent of plans allow company

stock as an investment option for both participant and company contributions; 3.2 percent allow company stock as an investment option for company contributions only.

Investment Options: Plans offer an average of 18 funds for both participant and company contributions. The most common are actively managed domestic equity funds, actively managed international equity funds, indexed domestic equity funds, and actively managed domestic bond funds. 63.6 percent of plans now offer a target-date fund.

Roth 401(k): Nearly half of plans (45.5 percent) allow participants to make Roth after-tax contributions.

Investment Advisors: 67.9 percent of companies retain an independent investment advisor to assist with fiduciary responsibility.

Investment Advice: Nearly 60 percent (57.6 percent) of respondent companies offer investment advice to employees, with 22.3 percent of participants using advice when offered.

Loans and Hardship Distributions: Similar percentages of plans offer loans and hardship distributions (88.8 percent and 89 percent, respectively).

For more information on 401(k)s and other retirement plan options, please contact us. ■

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