

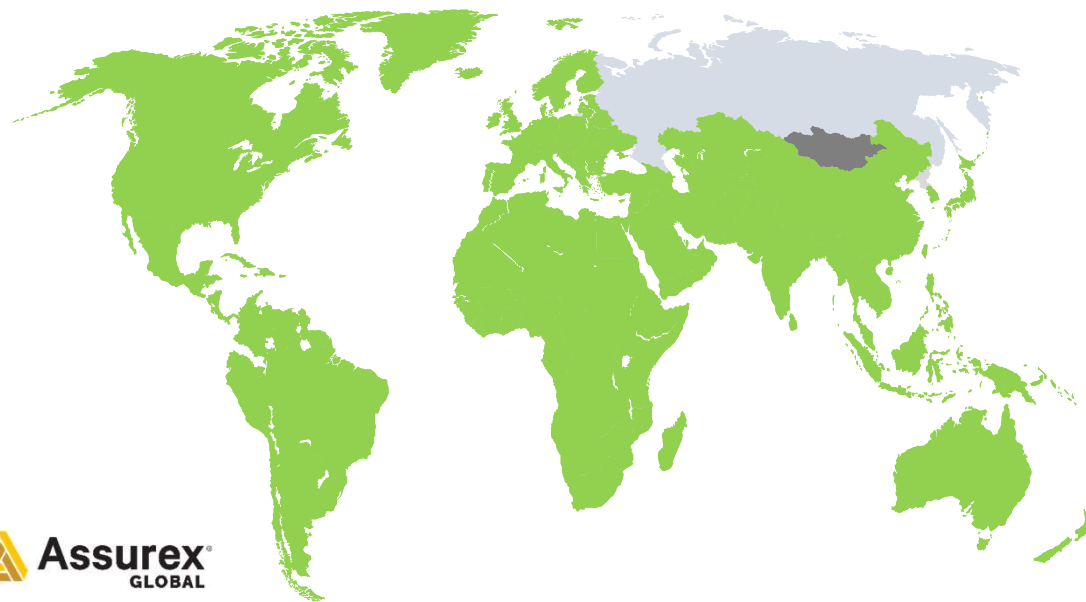
# Benefits During Leave

Presented by Benefit Comply  
**February 2025**



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# Three Step Analysis



- 1 – Is the leave of absence legally protected
- 2 – Do plan documents address eligibility during leave?
- 3 – What is employer's policy regarding benefits during leave?

# **Case Study #1**

## **Marjorie**

# Case Study #1: Marjorie

- Marjorie works for BasiCo. BasiCo employs 175 employees at a single location in Oklahoma.
- Marjorie has been employed by BasiCo for 4 years and works 40 hours per week with no major deviations in her work schedule over the last year.
- Marjorie is pregnant and requests 12 weeks of leave following birth of her child.
- Marjorie is enrolled in medical, dental, vision, life and disability coverage at the start of her leave.
- BasiCo's FMLA policy provides that BasiCo will cover the employee's share of the premium during leave and will recover them when employee returns to work.



# Case Study #1: Marjorie

## Step 1 – Is the leave of absence legally protected?

- Employer covered by FMLA?
  - ✓ More than 50 employees
- Employee eligible for FMLA?
  - ✓ 12 months of service, 1250 hours in last 12 months, works at a location with 50+ employees within 75 miles
- Reason for leave qualifies as FMLA?
  - ✓ Birth of a child
- Employee has FMLA time available?
  - ✓ No FMLA leave in last year

# Case Study #1: Marjorie

- Marjorie is eligible for 12 weeks of FMLA leave
  - During FMLA leave, Marjorie may maintain her health coverage as if actively working
    - Medical, dental, vision
    - Not required to maintain life and disability during FMLA leave – but many employers do
      - Check plan docs first – Step 2
- Marjorie must pay her share of premiums during the leave
  - If employee is using paid time off through payroll during leave, payroll deduct as normal
  - Pre-pay (*employer may offer but cannot be required*)
  - Pay as you go
  - Catch up payments

# Case Study #1: Marjorie

- Questions
  - How quickly can BasiCo deduct catch up payments from Marjorie's check when she returns to work?
  - If Marjorie's FMLA leave crosses the cafeteria plan year, can BasCo' deduct the payments pretax?
  - What happens to the premium payments if Marjorie does not return to work at the end of her FMLA leave?



# Case Study #2

## Jerome

## Case Study #2: Jerome

- Jerome works for Sting, LLC. Sting is covered by FMLA and Jerome is eligible for FMLA.
- Sting's FMLA policy states premiums must be paid at the same time as they would be deducted under their biweekly payroll schedule and coverage will be cancelled if premiums are not paid in a timely manner during the leave.
- Jerome requests 12 weeks leave due to a back surgery starting January 13, 2025.
- Jerome has medical and STD coverage at the start of his leave. Jerome files an STD claim which is approved and includes a premium waiver (no premiums are due while a claim is being paid).
- Initially Jerome pays his premium payments on time but 6 weeks into his leave he misses his February 21st 2025 premium payment.



## Case Study #2: Jerome

- Step 1 – Is the leave of absence legally protected? Yes, FMLA.
  - Jerome must pay his share of premiums during the leave
    - Payroll deduction if using paid time off through payroll
    - Pre-pay (*employer may offer but cannot be required*)
    - Pay as you go
    - Catch up payments
- Under FMLA if employee misses a premium payment the employee must be given:
  - 30 day grace period (*Jerome - March 23<sup>rd</sup>*)
  - 15 days written warning before coverage is cancelled (*Jerome - no later than March 8<sup>th</sup> if Sting wants to cancel on March 23<sup>rd</sup>*)
- Coverage can then be cancelled retroactive back to the last day premium was paid (*Jerome – February 8<sup>th</sup>*)
  - But coverage must be reinstated when Jerome returns to work (assuming he returns within the 12 week FMLA period)

## Case Study #2: Jerome

- Questions

- Grace period for late payment ends March 23rd, FMLA leave ends April 6th . Is it worth cancelling and reinstating coverage over this short time frame?
- What if coverage runs on a calendar month basis?
  - Can Sting actually cancel Jerome's coverage as of February 8th or can they only go back to March 1st? (Can't cancel back to February 1st).
  - If they do cancel his coverage and he returns to work on April 7th, when is his coverage reinstated – April 8th or April 1st? (Cannot wait until May 1st)

# Case Study #3

## Zaya

## Case Study #3: Zaya



- Zaya also works for Sting, LLC (see Case Study #2). Zaya is eligible for FMLA.
- Zaya requests 12 weeks leave to care for her sick mother in Bangladesh.
- Zaya has medical and dental coverage at the start of the leave. However, Zaya requests to drop her medical and dental coverage for the duration of her FMLA leave.

## Case Study #3: Zaya

- Step 1 – Is the leave of absence legally protected
  - Yes FMLA.
- Under FMLA employees have the right to discontinue their health coverage during the period of FMLA leave
  - But coverage must be reinstated when Zaya returns to work (assuming she returns within the 12 week FMLA period)

## Case Study #3: Zaya

- Questions
  - What if coverage runs on a calendar month basis?
    - If Zaya's FMLA leave starts and ends mid-month, can Zaya stop and start her coverage mid-month to coincide with those dates?



# Case Study #4

## Dwayne

## Case Study #4: Dwayne



- Dwayne works for Sting, LLC (see Case Study #2) at their Colorado location but has only been employed for 8 months.
- Dwayne requests 12 weeks of leave for the birth of his child.
- Dwayne has medical, dental and vision coverage at the start of his proposed leave.

## Case Study #4: Dwayne

- Step 1 – Is the leave legally protected?
  - Not FMLA – Dwayne has not been employed long enough to be eligible for FMLA leave.
  - However, Dwayne is eligible for leave under Colorado’s paid family leave law, FAMLI
    - All CO employees who earn at least \$2,500 are eligible for FAMLI leave
    - Job is protected if employed at least 6 months
    - FAMLI also requires “health care benefits” be maintained during periods of FAMLI leave
      - “Health care benefits” not defined but presumably same as FMLA – medical, dental and vision
      - Premiums can be collected by payroll deduction during leave (if using paid time off to supplement FAMLI benefits); payroll deduction when employee returns to work; repayment plan agreed to by employer and employee; or any other legal means.
      - Can employer require prepayment of premiums if leave is foreseeable? Unclear.
      - Can coverage be canceled for non-payment of premiums during the leave? Unclear.

## Case Study #4: Dwayne

- 15 states currently have some form of paid family and medical leave or in the process of implementing such leave
  - Some of these PFL laws provide job and benefit protection during the leave, some do not
- Many more states have unpaid family and medical leave laws
  - Most of these laws provide job protection but they do not all provide benefit protection
- Employers must be familiar with state leave laws in all states where they have employees.
  - Remote employees will generally be subject to the leave law in the state where they work, not the state where the employer or their supervisor is based

# Case Study #5

## Alicia

## Case Study #5: Alicia

- Alicia works for Mapa, Inc., a 40 employee company based in Alabama.
- Alicia requests three months medical leave for cancer treatment. The treatment goes slower than expected so she requests an additional three months of leave about half way through her original leave.
- Alicia has medical coverage only at the start of her leave.
- Mapa's medical plan documents defer to the employer to determine eligibility.
- Mapa has a medical leave policy that provides for up to three months of medical leave during which benefits are allowed to continue.
- The policy allows for extensions but states benefits will be terminated during any extended period of leave beyond the initial three months.



## Case Study #5: Alicia

- Step 1 – Is the leave legally protected?
  - No - Mapa is too small for FMLA; Alabama has no state leave laws
- Step 2 - Do plan documents address eligibility during leave?
  - No - Mapa's medical plan documents defer to the employer to determine eligibility
- Step 3 - What is employer's policy regarding benefits during leave?
  - Mapa allows benefits to continue only for the first three months of Alicia's leave
  - For the period of extended leave, Alicia's medical coverage is cancelled and she is offered COBRA

# Case Study #5: Alicia

## Employer nonFMLA leave policy should ideally address



- What if employer does not have a nonFMLA leave policy?
  - Time to draft one!

- ☐ How long can benefits be maintained before coverage is cancelled and COBRA offered, where applicable.
- ☐ How much must employee pay to maintain coverage during leave.
- ☐ When must payments be made (prepay, pay as you go, catch up) and due dates.
- ☐ Acceptable forms of payment (check, ACH, credit card)
- ☐ Will coverage be cancelled for non-payment of premiums during the leave?
- ☐ If coverage is cancelled during leave, will coverage be reinstated when the employee returns to work?



## Case Study #5.1: Alicia (variation)

- Same as Case Study #5 except Alicia also has voluntary life insurance coverage in addition to medical coverage at the start of her leave.
- The life insurance contract says coverage can continue for a period of 30 days of approved medical leave.
- Step 1 – Is the leave of absence legally protected? No.
- Step 2 - Do plan documents address eligibility during leave?
  - Yes – life insurance. Mapa must terminate Alicia's life insurance after 30 days of leave
  - Medical coverage can continue for three months in accordance with Mapa leave policy.
- Be sure to check all plan documents, including any wrap documents or stop loss contracts, as they may not all say the same thing.

# Case Study #6

## Tarik

## Case Study #6 Tarik

- Tarik works for Generoso, Inc. at their Florida location. Generoso is subject to FMLA and Tarik is FMLA eligible.
- Generoso's FMLA policy requires premiums be paid during FMLA leave or coverage will be cancelled for non-payment of premiums.
- Generoso's medical plan documents says coverage continues during FMLA leave but is silent with respect to nonFMLA leave.
- Generoso also has a nonFMLA medical leave policy that allows for up to 6 months of nonFMLA leave but only allows employees to keep benefits for the first three months.
- Tarik requests FMLA leave for heart bypass surgery. At the end of the 12 weeks of FMLA leave Tarik requests an additional four months of leave to further recover from his surgery, which Generoso grants.



## Case Study #6: Tarik

- Step 1 – Is the leave legally protected?
  - Yes – FMLA for the first 12 weeks (*Florida has no state leave laws*)
  - No for remaining four months of leave
- Step 2 - Do plan documents address eligibility during leave?
  - For the four months of nonFMLA leave, no.
- Step 3 - What is employer's policy regarding benefits during leave?
  - Generoso's nonFMLA leave policy controls during the four months of nonFMLA leave after FMLA expires.
- Bottom line – this is Case Study #2 for the first 12 weeks of leave followed by Case Study #5 for the next four months of leave

# Case Study #7

## Jenna

## Case Study #7: Jenna



- Jenna works 40 hours per week for StandUp Bank at one of their Nashville, TN branches.
- StandUp is large enough to be covered by FMLA but Jenna has only been employed by them for 11 months.
- Jenna requests eight weeks of leave to recover from knee surgery, which is granted under StandUp's nonFMLA medical leave policy.
- Under that policy, employees can continue their benefits for 60 days after which coverage is terminated. Jenna has medical coverage only at the start of her leave.
- Jenna reaches her one year anniversary three weeks into her nonFMLA medical leave.
- Jenna's recovery does not go well and she requests an additional six weeks of leave in addition to the eight she originally requested.

## Case Study #7: Jenna

- Step 1 – Is the leave of absence legally protected?
  - Initially no – Jenna is not FMLA eligible at the start of the leave (*Tennessee has a family leave law for birth or adoption but no medical leave law*)
  - However, upon reaching her one year anniversary Jenna becomes FMLA eligible and her right to FMLA leave “springs up”
- Jenna is entitled to 12 weeks of FMLA leave as of her anniversary date.
  - The three weeks of nonFMLA leave she took prior to that date do not reduce her 12 week leave entitlement.
- Because the leave is now FMLA leave, FMLA benefit protections apply
  - Jenna can maintain her medical coverage for the entire 14 week duration of the leave (first three weeks under StandUp’s policy, remaining 11 weeks under FMLA), notwithstanding that the coverage would have been cancelled under StandUp’s leave policy after 60 days.

# **Case Study #8**

## **Florence**



## Case Study #8: Florence

- Florence works for Lumberjack Chainsaws, Inc. (LJC). LJC is large enough to be covered by FMLA and Florence is FMLA eligible.
- LJC also has a nonFMLA medical leave policy that allows for up to 12 weeks of leave during which benefits are continued.
- LJC's plan documents all either defer to the employer or are silent when it comes to benefits during periods of nonFMLA leave.
- Florence suffers a significant work related injury which takes her off work for twelve months.



## Case Study #8: Florence

- Step 1 – Is the leave legally protected?
  - Yes – first 12 weeks are FMLA leave. Follow FMLA benefit rules.
  - Remaining leave time is *not* legally protected
    - Most work comp laws do not provide for job protected leave.
    - But most work comp laws do have discrimination / non-retaliation provisions which prohibit treating an employee with a work related illness or injury worse than an employee with a non-work related illness or injury.
    - Employees out on medical leave for a work related injury that is not FMLA should be treated the same as an employee under employer's nonFMLA medical leave policy when it comes to benefits.
    - Florence's benefits should be terminated and COBRA offered 12 weeks after the end of her FMLA leave, even though the employer decides to extend her leave for an additional six months.



# Questions

# Webinar Wrap-Up

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