

CLIENT ALERT

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IMPORTANT INFORMATION IF YOU PROVIDE LIFE INSURANCE TO YOUR EMPLOYEES

An area of increasing concern is what obligations an employer has to either terminating employees or terminated disabled employees with regard to advising them of their rights to port or convert Life Insurance coverage as well as the length of time an employer may carry a disabled employee on the Life Insurance plan.

- THE EMPLOYER'S RESPONSIBILITY TO NOTIFY TERMINATING EMPLOYEES OF THEIR RIGHT TO PORT AND/OR CONVERT THEIR LIFE INSURANCE.

In *Erwood v. Wellstar Health Sys., Inc.*, 2017 WL 1383922 (W.D. Pa. 2017), the employer was fined \$750,000 for failure to provide Life insurance conversion information to an employee who subsequently passed away. Employers have an obligation to notify terminating employees of their conversion or portability right. Most believe they are following this obligation by providing the employee with the SPD or Booklet, however this may not be enough. We highly recommend that as part of your exit interview procedure or termination letter that you include information on how an employee may obtain information of their conversion/port rights. Keep in mind that most of the time an employee must exercise either right within 30 days of losing coverage, so timing is essential.

Employees whose coverage is reduced due to age also have conversion/port rights. Ideally, an employer will notify affected employees when the reduction in benefits occurs. In lieu of that, an annual statement as part of Open Enrollment material is recommended.

- DISABLED EMPLOYEES MAY HAVE DIFFERENT OPPORTUNITIES

Waiver of Premium – Most policies will have a Waiver of Premium provision whereby after an employee has been disabled for 6-9 months, a Waiver of Premium claim may be filed. If approved, coverage continues until a specified time in the policy. Typically to be eligible for Waiver, an employee must be

disabled prior to age 60. (You must check your policy to determine exact age qualifications). An employee may have conversion rights after the end of the Waiver of Premium time period.

Employers that have employees who are disabled and who are not eligible for waiver of premium have different obligations and rights. Most policies will allow an employer to keep such employees on the plan on a premium paying basis for a specific period of time, many policies stipulate 12 months. After the 12 month period there is a conversion right and possibly a right to port the coverage. Employers who maintain coverage beyond the specified time in the policy risk the lost right of the employee to convert as they are beyond their 30 day window or worse having to pay a claim out of pocket.

➤ RECOMMENDATIONS FOR EMPLOYERS

Make sure you have distributed the Employee Booklets to all covered employees. If you are unsure whether you can distribute these electronically, I've included our Client Alert regarding the DOL's Safe Harbor Rules for Electronic Disclosure.

Read your policy so that you know the allowable time frames.

If you have multiple locations, make sure that you are advised in a timely fashion when an employee leaves the company.

Make sure all terminating employees are notified of their possible right to port or convert their life insurance and provide information of how they can obtain that information. Include that coverage is time sensitive. This may be as simple as directing them to the applicable pages of their life insurance booklet, with a short paragraph of their possible options.

For disabled employees that you are terminating who are eligible for Waiver of Premium – provide information on the waiver process. You must continue to pay premium until the waiver has been approved. Remember that “disability” under Waiver of Premium is defined as the inability to do any job. So an employee that is disabled from their own job may not meet the waiver standards. In this case, the employee may need to convert while waiting for the approval for the waiver.

For disabled employees that are terminating who are NOT eligible for Waiver of Premium – provide information on the Port and Convert Options. Note that some carriers will not offer portability to disabled employees and their only option may be to convert.

For employees who may be terminal, most policies now have an option for the employee to receive a portion of their life insurance proceeds while alive. While not a requirement and a hard conversation to have, this additional cash flow to your employee may be a welcome relief.

Talk to your CHB Group Account Manager. We can help you draft letters for different scenarios.

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