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| March 23, 2020 | LEGAL ALERT**Collecting Premiums During Employee’s Leave of Absence**When an employee takes an unpaid leave of absence, the question arises on how an employer should collect benefit premium payments to continue benefits during that time. The only regulatory guidance on this comes from the original Family and Medical Leave Act (FMLA) regulations.**Following those, employers have three choices, they can utilize just one method, two methods or all three:**1. **Pay in advance.** Employers can collect a lump sum payment for missed payroll deductions in advance of the leave of absence. Employees should consult with their personal tax advisor on any credits or deductions they might receive for paying premiums post-tax.
2. **Pay as you go.** Employees can remit payment post-tax, with payment deadlines coinciding with pay periods. Employers should set firm guidance on where to remit payment, when it is due, and warn employees that missed payments will subject the employee to plan termination retroactive to the due date of the payment; which could expose the employee to claims if they seek healthcare services during that time.
3. **Pay upon return.**  Employers can allow employees to pay premiums pre or post-tax upon return. It is highly encouraged to give employees a certain amount of pay periods to pay back each missed premium payment. All employees should be provided the same amount of time to pay back missed premiums. For example, employees could be provided 2 pay periods to pay back one missed premium payment. Employees who do not return to work and do not pay back their premiums can either have coverage terminated retroactively to the last date paid, or the employer can treat the missed payment as a debt. Counsel should be consulted on how to handle this debt. Employers should clearly communicate the ramifications of not returning to work on the employee’s coverage.

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