

Putting A Lid On Benefits Premiums

It seems I often start off these bulletins by saying, “A number of clients have recently asked me...” and this one is no different.

A spate of clients has been asking about how to cease payment of benefits and insurance premiums when an employee has been on an extended leave of absence. This may seem like a simple matter, but it isn't.

What Kind Of Leaves Of Absence?

It's worth talking, at the outset, about leaves of absence. There are, in essence, two types of leaves of absence, “statutory” leaves and “non-statutory” leaves.

Statutory leaves, in B.C., presently include pregnancy (maternity) leave, parental leave, family responsibility leave, compassionate care leave, reservists' leave, bereavement leave, and jury duty. Non-statutory leaves include medical absences and other personal leaves (going back to school, backpacking around Europe, etc.).

It's important to know the difference because statutory leaves must be handled differently. The B.C. *Employment Standards Act* compels employers to “continue to make payments to a pension, medical or other plan beneficial to an employee as though the employee were not on leave”. (The only exception arises when the premium payments are shared between the employer and the employee and, for whatever reason, stops paying his or her share.)

Why Are We Paying Premiums During Absences?

There is, however, no blanket legal obligation for employers to continue to pay benefits and insurance premiums for employees who are on non-statutory (medical, personal) leaves of absence. So, why do employers keep on paying? After all, benefits and insurance premiums are *very* costly and getting more so every day!

It seems that most employers simply don't have a policy or really even a standard procedure for dealing with payment of premiums when an employee takes a leave of absence. As a result, they just keep paying those premiums... month... after month... after month...

Without a doubt, the answer is to implement a policy – applicable to all non-statutory leaves (more about this, below) dictating how long the employer will pay premiums after the commencement of a medical/personal leave.

Are There Risks Associated With Cutting Off Payment of Premiums?

Yes, there are risks, and it's important we proceed carefully with the creation and implementation of a policy on this topic.

The first and most glaring risk is that a medically disabled employee in relation to whom the employer has stopped paying premiums will initiate a complaint of discrimination. *Whenever* we are dealing with employees suffering from a medical disability and are imposing changes to their employment, the spectre of a human rights complaint is very real.

The best answer to that possibility, however, is to make the policy applicable to all types of leaves of absence (except statutory leaves), not just medical leaves. It is (arguably) not discriminatory to have a policy applicable to your *entire* staff and to *all* manner of medical/personal leaves.

It is, of course, also important that the policy is strictly and consistently applied.

Avoiding Gaps In Coverage

The other primary risk of a policy limiting the employer's obligation to pay premiums during an absence is that, in the transition to the employee assuming responsibility for the full premium payments, a gap in coverage occurs. The employer could easily end up being determined to be responsible for that gap in coverage, so it is critical for a policy to provide a structure of notice and transition so the employee does not suffer an unwanted gap in coverage.

I've previously written on the topic of gaps in benefits and insurance coverage – particularly disability coverage – and here's a snippet from that bulletin...

“... if the employee becomes disabled during the notional working notice period, the disability insurance is no longer available to provide wage-replacement benefits. As a result, the employer may be held liable for any benefits payments the employee would have enjoyed had she been given working notice.

The same risk arises when the employer chooses to dismiss the employee summarily for just cause reasons. If the just cause grounds are rejected by a court, the employer will be liable for the lost benefits in the event of a disability arising during the notice period.

The employer effectively steps into the shoes of the insurer for as long as the benefits payments would have been paid. Unless the employer happens to be an insurance company, this tends to be an unhappy place to be.”

It is worthwhile, as an employer, to bend over backwards to ensure the employee has been duly (and repeatedly) notified of the impending cessation of premium payments, has been warned about the risks of letting the coverage lapse, has been given contact information for the benefits and insurance providers, and has been given plenty of time to make the necessary arrangements for payment. All of this must happen in writing, preferably with proof of delivery.

If there is any doubt in your mind about whether these steps have been satisfactorily followed, don't cease making premium payments until that doubt has been erased.

What If We Have Employees Already On Leave?

It's *definitely* riskier to implement such a policy when an employee is in the middle of a medical/personal leave than it is to have the policy in place from the outset. This scenario is fraught with potential for liability – *definitely* talk to us about this situation before implementing a policy.

This item is provided for general information purposes only and is not intended to be relied upon as legal advice. Informed legal advice should always be obtained about your specific circumstances.

Smithson
Employment Law Corporation

306-1500 Hardy Street, Kelowna, B.C. V1Y 8H2 | Phone: 778-478-0150 | Fax: 778-478-0155
www.smithsonlaw.ca