Dropping Family Memebers from Coverage in Anticipation of a Divorce

Issues can arise when an employee instructs the employer to drop a family member from health coverage. In some cases, this may be a simple request based on the fact that the spouse is now covered by an employer or a dependent child has been added to the newly covered spouse's plan. In other situations, however, this request may be based on the employee's plans to divorce. When a spouse and/or dependent is dropped in anticipation of a divorce, it can create a series of complications for the employer and employee.

Let's look at a scenario. Jason and his spouse, Judy, have decided to part ways, and she has moved to a different location with the children. They have filed for divorce and Jason has decided that he no longer wants to pay for Judy's health insurance. Jason decides to drop her coverage during annual open enrollment, even though the divorce is not final yet.

If Jason drops Judy from coverage, he may be dropping her "in anticipation" of a qualifying event (divorce). The "In Anticipation of Divorce" rule is often overlooked, but requires that COBRA coverage be made available to a spouse following a divorce – even if that spouse is not enrolled in the plan at the time of the divorce. So while Jason could drop Judy's coverage during open enrollment, when the divorce is finalized, she will qualify for COBRA coverage.

So what happens when Jason asks to drop coverage for Judy and it is outside the open enrollment period? What should an employer do?

Option 1: If Jason has elected to have his health plan contribution withheld pre-tax through the employer's cafeteria plan, it is likely that this plan will not allow a mid-year change without a life event such as new employment, divorce, etc. When employees sign up for a cafeteria plan, IRS regulations require it to be treated as an irrevocable election and the election cannot be changed during the plan year except under certain circumstances. So even if Jason were allowed to drop coverage for Judy, he could still be charged the same contribution amount until the divorce occurs.

Option 2: The employer's plan may stipulate that only spouses residing in the same residence are entitled to coverage. In that case, Judy is no longer an eligible spouse and may be entitled to COBRA even though they have not yet divorced or legally separated because she would otherwise lose health coverage as a result of this change in status. Also, employers should check this in advance with their carrier.

Option 3: The employer's plan may stipulate that an employee can only drop a spouse from coverage during the plan year if the spouse has obtained other coverage. The employer could require proof of this other coverage, and also Judy's authorization approving her drop from coverage. When a spouse is dropped because the spouse has other coverage, no COBRA qualifying event has occurred and COBRA is not offered.

Option 4: Employees sometimes act in haste and regret their actions later. The employer may wish to explain to Jason that if Judy is dropped now, prior to the divorce or legal separation, Judy may contact a lawyer and seek court ordered coverage until the divorce is final. There is also the potential risk of being sued for damages and attorney fees.

The above options are possible approaches which must be measured against the language in the employer's health plan and the particular facts and circumstances surrounding the situation.

Employers are advised to proceed cautiously in these situations in order to avoid complex COBRA obligations, violations of plan document rules and strained employee relations.

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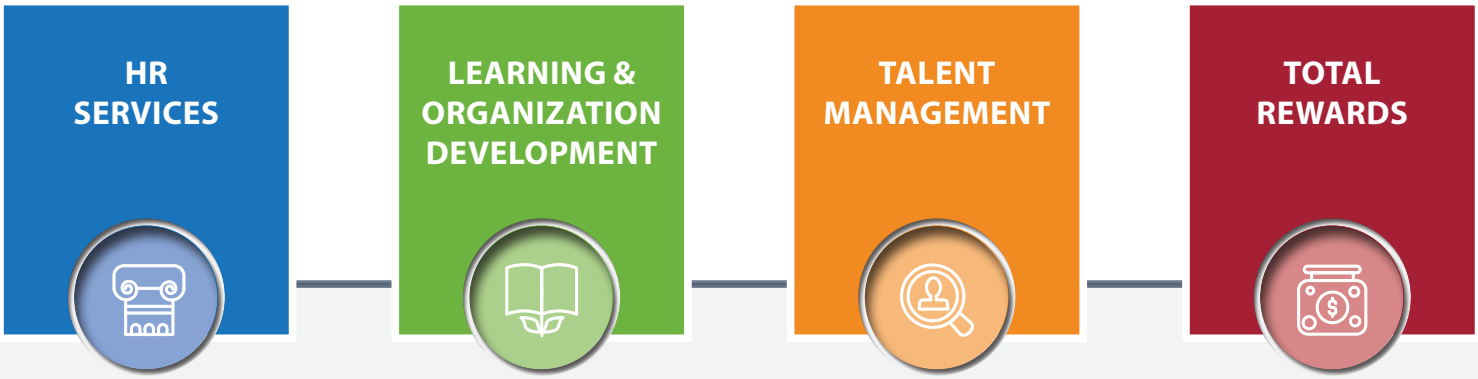

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