



# Benefits Eligibility During a Leave of Absence

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Practical steps for determining health plan eligibility and continuation obligations for employees on leaves of absence.

# This guide is designed to help employers, HR professionals, and benefits advisors determine health plan eligibility when an employee takes a leave of absence.

It provides both a compliance framework explaining how major laws interact and a practical, step-by-step process employers can use when analyzing benefits eligibility during leave.

The analysis applies to employers in all states and addresses common leave scenarios, including:

- Federal and state benefits-protected leave
- Workers' compensation leave
- Americans with Disabilities Act (ADA) accommodations and similar state disability or antidiscrimination laws
- Affordable Care Act (ACA) employer mandate rules (for applicable large employers)
- Federal and state obligations under benefits continuation laws (federal COBRA and state mini-COBRA)
- Contracts or collective bargaining agreements

It's important to note that while the Employee Retirement Income Security Act (ERISA) does not establish leave or benefits continuation requirements, it does govern how group health plans must be administered, including adherence to written plan terms and, for self-funded plans, potential preemption of certain state insurance laws.

Improper administration of benefits during leave can expose employers to penalties, claims, liabilities, and unexpected premium costs.



## Part I: Core Rules for Benefits Eligibility During Leave

### Benefits-Protected Leave Controls First

When an employee is on a leave protected under federal law, such as the federal [Family and Medical Leave Act](#) (FMLA) or a similar [state leave law](#) that requires continuation of group health benefits, the employer generally must maintain active group health plan coverage on the same terms and conditions as if the employee were actively working. Protected leave laws require continuation of group health coverage only. Other benefits (e.g., life or disability insurance) are governed by plan terms. Key rules include:

- Active group health coverage must continue.
- The employer must continue paying its share of premiums.
- The employee may be required to pay their normal share of premiums.
- [COBRA](#) or [state continuation coverage](#) should not be offered during protected leave.

### Coverage During Military Leave

Employees who take leave for military service may have additional health coverage rights under the [Uniformed Services Employment and Reemployment Rights Act](#) (USERRA).

Under USERRA, employees and their covered dependents must be given the option to continue employer-sponsored group health plan coverage for up to 24 months while the employee is on military leave. During the first 30 days of military leave, the employee may be required to pay only their share of the premium. After the first 30 days, the plan may charge up to 102% of the full premium, similar to COBRA continuation coverage.

If the employee elects not to continue coverage during military leave, they must generally be reinstated in the group health plan upon re-employment without waiting periods or exclusions (other than those related to service-connected conditions).

USERRA continuation rights operate separately from COBRA and may apply even when COBRA continuation coverage would not otherwise be available.



## After Protected Leave Ends, Plan Terms Control

Once protected leave has been exhausted, eligibility for active health coverage is no longer governed by leave law and is determined by:

- The written terms of the employer's group health plan;
- Contracts or union agreements, if applicable; and
- [ACA employer mandate](#) rules, where applicable.

Leave provided as a reasonable accommodation under the [ADA](#) or similar [state disability](#) or antidiscrimination law does not require continuation of active health coverage beyond what the group health plan allows.

## Loss of Eligibility and COBRA

If an employee loses eligibility for active coverage under the plan, typically due to a reduction in hours, that generally creates a COBRA qualifying event which may result in up to 18 months of continuation coverage.

## Premium Payment During Leave

Employers may establish reasonable premium payment procedures during leave, including:

- Maintaining payroll-style deductions when pay continues;
- Allowing monthly after-tax payments similar to COBRA billing;
- Permitting pre-tax repayments through a cafeteria plan upon return from leave; or
- Applying existing unpaid leave payment rules that do not require advance payment or higher premiums.

Coverage may be terminated for nonpayment when permitted by law, provided proper notice and grace periods are followed. The specific notice required, and the timing of that notice, depends largely on the type of leave.

## Part II: Step-by-Step Decision Tree

When an employee goes on leave, multiple regulatory frameworks may apply simultaneously (e.g., [FMLA](#), [ADA](#), [workers' compensation](#), [ACA](#)). The analysis must be conducted in the order described, because different laws control at different stages.

The following decision tree walks through the required steps for analysis. Each step should be evaluated in order. If the answer to a step is "no," proceed to the next step unless otherwise indicated.

### START: Employee Goes on Leave

**Step 1: Determine whether protected leave laws apply**  
**Controlling authority: Federal or state leave law**

Is the leave covered by FMLA or a state medical, family, pregnancy, or similar leave law that requires continuation of group health benefits?

If **yes**, employers must maintain active group health coverage under the same terms and conditions as if the employee were actively working. This means:

- The employer continues to pay its share of premiums.
- The employee may be required to pay their portion of premiums using reasonable payment options.
- Coverage remains active.
- The employer does not offer COBRA or state continuation during the protected leave period.

Workers' compensation leave or ADA leave may run concurrently with FMLA if eligibility requirements are met.

Once all applicable federal and state benefits-protected leave has been exhausted, proceed to Step 2.

## Step 2: Evaluate workers' compensation requirements

### Controlling authority: State workers' compensation law

Is the leave related to a workers' compensation injury or illness?

If **yes**, determine whether [state workers' compensation law](#) requires continuation of group health coverage.

In most states, workers' compensation laws do not require continuation of active group health coverage. Medical benefits related to workplace injury are covered separately under workers' compensation law and are distinct from group health plan eligibility.

Note that some states (e.g., Connecticut and Rhode Island) have language in their workers' compensation statutes that could require an insured plan to continue coverage for a period of time. Always check state law to understand compliance obligations.

Self-funded (including most level-funded) ERISA plans are often preempted from state insurance mandates, but employers should confirm if they are obligated under workers' compensation law to provide some equivalent benefit.

If workers' compensation leave also qualifies as FMLA or state-protected leave, Step 1 takes precedence.

If continuation is not required under state law or other agreement, proceed to Step 3.

Other agreement examples are collective bargaining agreements, employment agreements (especially executive contracts), and severance or leave policies incorporated by contract.

## Step 3: Apply the group health plan's eligibility terms

### Controlling authority: Written plan documents

Once protected leave obligations no longer apply, eligibility is governed by the written terms of the employer's group health plan.

Review the [Summary Plan Description](#) (SPD), insurance carrier certificate (for insured plans), plan document (for self-funded plans), and any eligibility policies referenced in the SPD.

Plans commonly require employees to actively work a minimum number of hours per week unless they are on a protected leave. If the employee is no longer meeting the plan's active work or minimum hours requirement and the plan does not permit continued eligibility during unpaid, non-protected leave, eligibility for active coverage may terminate in accordance with the plan.

### Important clarifications:

- Employers must follow written plan terms.
- Past practice or informal continuation of coverage does not override plan language.

If eligibility continues under plan terms, follow the plan's rules regarding duration and cost.

If eligibility would terminate under plan terms, proceed to Step 4 before terminating coverage.

## Step 4: Determine whether ACA employer mandate rules apply

### Controlling authority: ACA

Is the employer an [applicable large employer](#) (ALE) under the ACA using the look-back measurement method?

If **yes**, determine whether the employee is currently in a stability period during which they previously qualified as full time. If so, they must remain eligible for coverage through the end of that stability period (even if they are not currently averaging 30 hours per week) unless employment terminates or another permitted termination event occurs under ACA rules.

A reduction in hours alone does not remove full-time status mid-stability period.

If the stability period has ended or ACA continuation requirements do not apply, coverage may terminate consistent with plan terms. Proceed to Step 5.

## Step 5: Offer COBRA or state continuation coverage

### Controlling authority: COBRA or state continuation law

If active coverage ends due to a loss of eligibility (such as a reduction in hours), that loss of coverage is generally a [COBRA-qualifying event](#) for qualified beneficiaries.

Employers must offer federal COBRA (for employers with 20 or more employees) or applicable state continuation coverage (mini-COBRA) within required statutory time frames.

COBRA coverage is effective as of the date active coverage would otherwise terminate.

## Important Notes and Best Practices

Multiple regulatory frameworks may apply simultaneously. For example:

- A workers' compensation leave may also qualify as FMLA.
- ACA stability period protections may apply after protected leave ends.
- ADA accommodation leave may overlap with plan eligibility analysis.

Each framework must be evaluated in order. Termination decisions should not be made until all applicable steps have been reviewed.

Before terminating active coverage during a leave of absence, employers should confirm:

- Protected leave requirements have been exhausted.
- Continuation under state workers' compensation or contractual obligation is not required.
- Plan eligibility terms permit termination.
- ACA stability rules do not require continued eligibility.
- COBRA or mini-COBRA procedures are prepared and ready to be implemented if a qualifying event occurs.

Employers should clearly document how benefits are handled during protected and non-protected leave, consistently apply premium payment rules, and promptly terminate coverage for nonpayment when permitted. If plan language is unclear, confirm eligibility rules with the insurance carrier for insured plans or the third-party administrator for level-funded or self-funded plans.



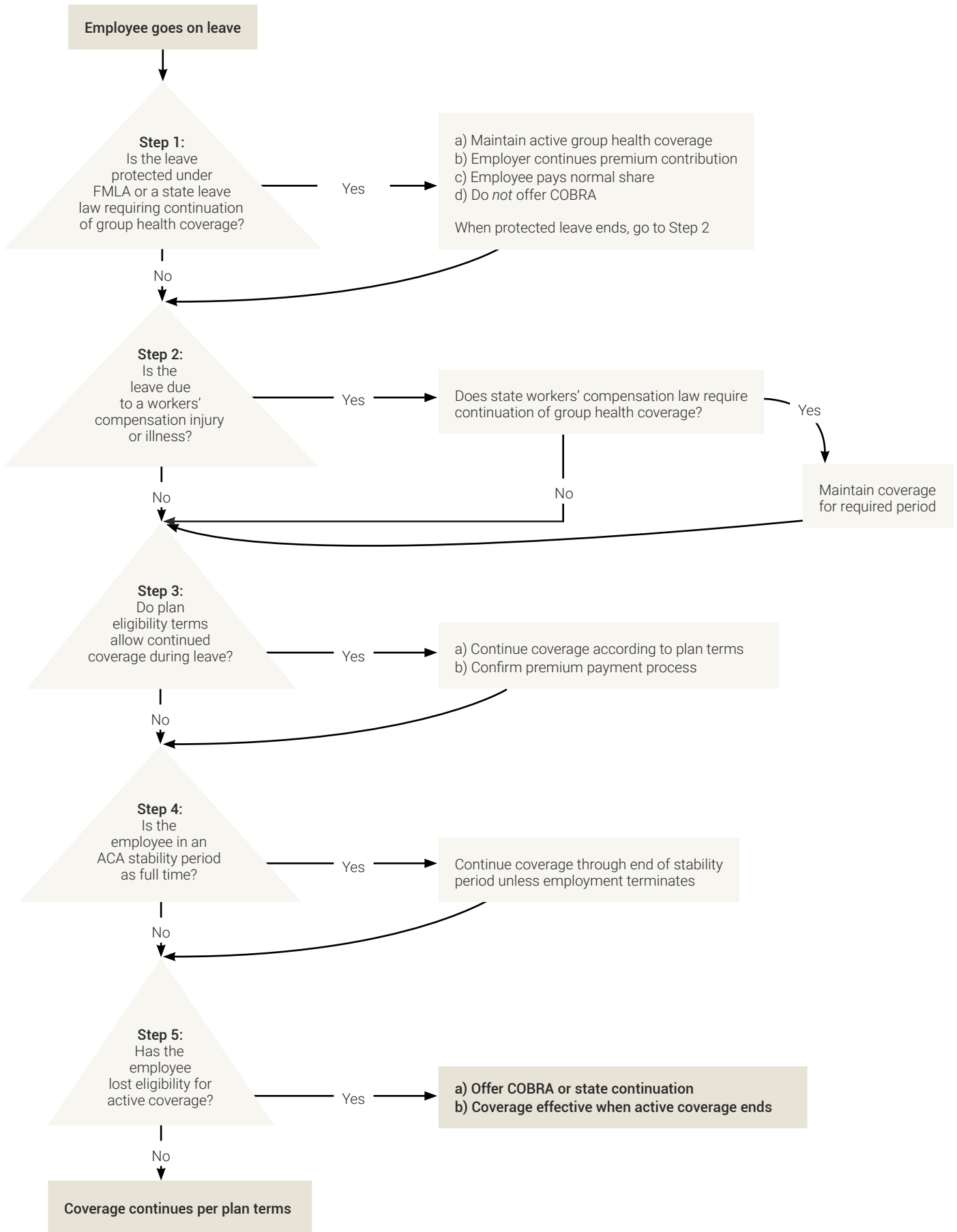
## Common Mistakes and Compliance Pitfalls

The following are common errors that can result in compliance exposure, unexpected premium costs, or employee disputes.

1. **Failing to distinguish between protected and non-protected leave.** Employers often assume all leaves require continuation of active benefits, when in reality only certain federal or state leave laws require continuation of group health coverage. Once protected leave ends, eligibility reverts to the written terms of the group health plan.
2. **Treating leave laws as mutually exclusive.** Workers' compensation leave, FMLA leave, and ADA accommodation leave often run concurrently. Failing to evaluate whether multiple laws apply at the same time can lead to premature termination of coverage or unnecessary continuation.
3. **Automatically terminating coverage at the end of FMLA or state leave without reviewing ACA stability period rules.** For ALEs using the ACA look-back measurement method, terminating coverage mid-stability period may result in employer mandate penalties.
4. **Ignoring written plan eligibility terms.** Eligibility must be determined strictly in accordance with the [written plan documents](#). Informal extensions of coverage can create ERISA compliance issues and discrimination risk.
5. **Assuming workers' compensation leave requires continuation of active group health coverage.** In most states, workers' compensation laws do not require continuation of active group health benefits. Coverage of work-related medical expenses under workers' compensation is separate from group health plan eligibility. However, state-specific rules or collective bargaining agreements may impose additional obligations.
6. **Relying on ADA accommodations as a basis to continue benefits.** While the ADA may require employers to consider unpaid leave as an accommodation, it does not require continuation of active health coverage beyond what the group health plan allows.
7. **Failing to enforce premium payment rules during leave.** Allowing employees to fall significantly behind on premium payments increases the risk the employer will absorb unpaid premiums if the employee does not return. Termination for nonpayment must comply with applicable notice and grace period requirements.
8. **Offering COBRA too early or too late.** COBRA should not be offered during protected leave if active coverage must continue. Conversely, once coverage is lost due to a qualifying event (such as a reduction in hours), COBRA must be offered within required statutory time frames. Premature or delayed COBRA administration can create penalties and coverage confusion.
9. **Overlooking cafeteria plan implications.** Pre-tax contributions under a [§ 125 cafeteria plan](#) may not be available once an employee is no longer receiving taxable compensation. Failure to coordinate leave administration with cafeteria plan rules can create tax compliance issues.
10. **Inconsistent treatment of similarly situated employees.** Providing different continuation terms for similarly situated employees—unless required or permitted by law or plan terms—can create [ERISA fiduciary concerns](#), § 105(h) nondiscrimination issues (for self-funded plans), and discrimination claims. Consistent administration and clear documentation are critical to reducing compliance risk.
11. **Failing to document the decision-making process.** Benefit continuation decisions should be documented to reflect which laws were analyzed, when protected leave ended, what the plan terms require, whether ACA stability rules apply, and when a COBRA qualifying event occurred. Lack of documentation makes decisions difficult to defend if challenged.

Employers should develop a standardized leave of absence benefits checklist or use the [Leave of Absence Benefits Checklist](#) to ensure consistent and legally compliant administration.

# Leave of Absence Benefit Eligibility Decision Flowchart



# Leave of Absence Benefits Checklist

## Health Plan Eligibility and Continuation Review

Employee name:

Employee ID:

Leave start date:

Expected return date (if known):

Date of review:

Reviewed by:

## Step 1 – Determine Whether Protected Leave Laws Apply

### Federal FMLA

Is the employer subject to FMLA?

Has the employee met eligibility requirements?

Has FMLA been designated and documented?

FMLA start date:

FMLA exhaustion date:

### If FMLA applies:

Active group health coverage maintained

Employer premium contribution continued

Employee premium payment method confirmed

COBRA not offered during protected leave

### State leave law

Does state law require continuation of group health benefits?

State leave start date:

State leave exhaustion date:

### If state leave law applies:

Active coverage maintained per state law

## Step 2 – Workers' Compensation Review

Is leave due to a work-related injury or illness?

Does state workers' compensation law require continuation of group health coverage?

Any collective bargaining agreement obligations?

Self-funded ERISA plan preemption evaluated (if applicable)?

### If continuation required:

Coverage maintained for required period

### If continuation not required:

Proceed to plan eligibility review

## Step 3 – Review Plan Eligibility Terms

### Plan type:

Fully insured

Self-funded/level-funded

### Documents reviewed:

SPD

Plan document

Insurance certificate (if insured)

### Eligibility requirements:

Minimum hours required:

Employee currently meeting active work requirement?

Plan permits continued eligibility during unpaid leave?

### If eligibility continues:

Duration documented

Premium payment terms confirmed

### If eligibility would terminate:

Proceed to ACA review before termination

## Step 4 – ACA Employer Mandate Review (ALE Only)

Employer is an ALE

Look-back measurement method used

Employee in active stability period as full time?

### If stability obligation applies:

Stability period start:

Stability period end:

Coverage continued through stability period

### If stability obligation does not apply:

Coverage may terminate consistent with plan terms

## Step 5 – Premium Payment Administration

Payment method documented (payroll, monthly, other)

Pre-tax contributions permitted under cafeteria plan rules?

Grace periods tracked

Required notices provided for nonpayment

Termination date (if applicable):

## Step 6 – COBRA or State Continuation

### If loss of eligibility occurs:

- Qualifying event identified (e.g., reduction in hours)
- Qualifying event date:
- COBRA notice sent within required statutory time frame
- Notice sent date:
- Coverage termination date:
- COBRA effective date:

### If employer not subject to federal COBRA:

- State continuation requirements reviewed

## Concurrent Leave Review

- FMLA and workers' compensation running concurrently (if applicable)
- ADA accommodation overlap considered
- State leave running concurrently (if applicable)

## Final Termination Verification (If Applicable)

Before terminating active coverage, confirm:

- Protected leave exhausted
- No state or contractual continuation requirement applies
- Plan terms permit termination
- ACA stability rules do not require continued eligibility
- COBRA process ready to be administered

## Documentation and Consistency

- All determinations documented in employee file
- Premium payment records retained
- Notices retained
- Consistency review completed (similarly situated employees treated the same)

## Notes/Special Circumstances:

HR Representative:

Date:

Benefits/compliance reviewer (if required):

Date: