Eligibility Matters:
Getting it *Right* During a Leave of Absence

PRESENTED BY

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Webinar

July 13th, 2026

Today's Presenter

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Vice President of Compliance, Cottingham & Butler

- Directs compliance initiatives for the Benefits Practice encompassing all aspects of the employer-employee relationship.
- Leads employers through strategic planning to respond to the obligations and opportunities created under regulatory law, while encouraging anticipatory compliance.

Selected Background

- Trusted advisor with 25 years as a licensed attorney specializing in employee benefits (ERISA) and employment law
- Successfully built and led a multi-state HR consulting practice for a major national insurance broker
- Former head ERISA attorney for a prestigious HR-boutique law firm focused on helping employers with complex compliance issues
- Featured labor law expert on WGN's *Opening Bell* radio show and podcast, breaking down workplace trends for business leaders

Why Eligibility Rules Matter

When an employee takes a leave of absence, it raises a variety of questions regarding that employee's benefits:

- Should benefits be maintained during the leave?
- If so, for how long?
- If not, should the benefits be cancelled or suspended? Should COBRA be offered?
- What options does an employee have regarding payment of premiums?
- What happens to their benefits when they return to work?

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Why Eligibility Rules are Difficult to Apply

Much of the difficulty arises from the number of variables that affect the answer

- Leave variables
  - FMLA & other legally protected leaves
  - Reason for leave
  - Duration of leave

- Benefit variables
  - Health, Dental, Vision, Disability, PTO, Retirement, etc.
  - Premiums & pretax deductions

- Organizational variables
  - Employment status / position
  - Consistency & protected class status
  - Business needs
  - Employee relations & organizational culture

The Process

Check the Law

- Are benefits protected during the leave of absence?

Check the Plan Documents

- Do the eligibility rules of the benefit plans address the situation?

Check the EE Handbook

- Is there an underlying employer policy or past practice that guides?

Check the Law

FMLA

FMLA generally requires employers to <u>maintain</u> an employee's health benefits coverage (medical, dental, vision) during FMLA leave.

Employee will owe their usual share of the premium costs while on leave.

- **Employer:** 50+ employees
- **Employee:** 12 months/1250 hours of service, work at a location with 50+ employees in a 75-mile radius
- **Reason for leave:** Birth/adoption; employee's serious health condition; spouse, parent, child with serious health condition; family military leave; family member injured in line of duty
- **Amount of leave:** 12 weeks of leave in a 12-month period

ADA

The ADA doesn't require the maintenance of benefits during a leave of absence that is the result of an employer providing reasonable accommodation.

Employer policy and plan eligibility rules should be followed.

- **Employer:** 15+ employees
- **Employee:** All employees
- **Reason for leave:** Medically necessary leave related to employee's disability where such leave is a "reasonable accommodation"
- **Amount of leave:** No fixed period of leave, fact specific. EEOC suggests leaves of several months may be reasonable; some courts suggest only a leave of a few weeks at most is reasonable.

PWFA

The PWFA doesn't require the maintenance of benefits during a leave of absence that is the result of an employer providing reasonable accommodation.

Employer policy and plan eligibility rules should be followed.

- **Employer:** 15+ employees
- **Employee:** All employees
- **Reason for leave:**
  - Any inability to perform essential function of job for a temporary period,
  - The essential function could be performed in the near future, and
  - The inability to perform the essential function can be reasonably accommodated
- **Amount of leave:** No fixed period of leave, fact specific.

Workers' Comp

Workers' compensation laws don't require the maintenance of benefits during a leave of absence that is the result of an employer allowing time for an employee to recover.

Employer policy and plan eligibility rules should be followed.

- **Employer:** All employers
- **Employee:** All employees
- **Reason for leave:** It's not about leave. WC provides financial and medical support for people exposed to a work-related injury or illness.
- **Amount of leave:** WC doesn't require leave time, nor does it guarantee job protection. However, an employer cannot terminate an employee in retaliation for filing a claim or because they were injured on the job.

Check the Plan Documents

What are you looking for?

Where you should look:

- **Plan Doc/SPD** – Summary Plan Description. SPD and plan document are often the same document. Typically COC for a fully insured plan.
- **COC** – Certificate of Coverage. Document that describes details of benefits under a fully-insured plan a/k/a “the policy”; not a benefit summary.
- **Group App** – Group application submitted at time employer initially applied for group coverage
- **GMC** - Group Master Contract. Agreement between employer and the fully-insured carrier.

- Eligibility rules
- Waiting periods
- Termination of coverage
- COBRA and other coverage continuation rights
- Leave of absence situations
- Premium payment obligations
- Definitions
- Other relevant sections
  - E.g. waiver of premiums

What might the Plan Documents say?

Fully-Insured Plan: Eligibility rules will be determined jointly among the carrier and employer plan sponsor.

Self-Funded Plans: Plan sponsor should be able determine their plan's eligibility rules, subject to TPA limitations and Stop-loss carrier approval.

- Authorizes coverage during leave
  - "Coverage under this plan may continue during a period of employer approved leave."
- Prohibits coverage during leave or after some period of leave
  - "Coverage under this plan may continue up to 6 months during a period of approved medical leave."
- Silent or ambiguous
  - "Eligibility: Full-time employees working 30 hours per week."

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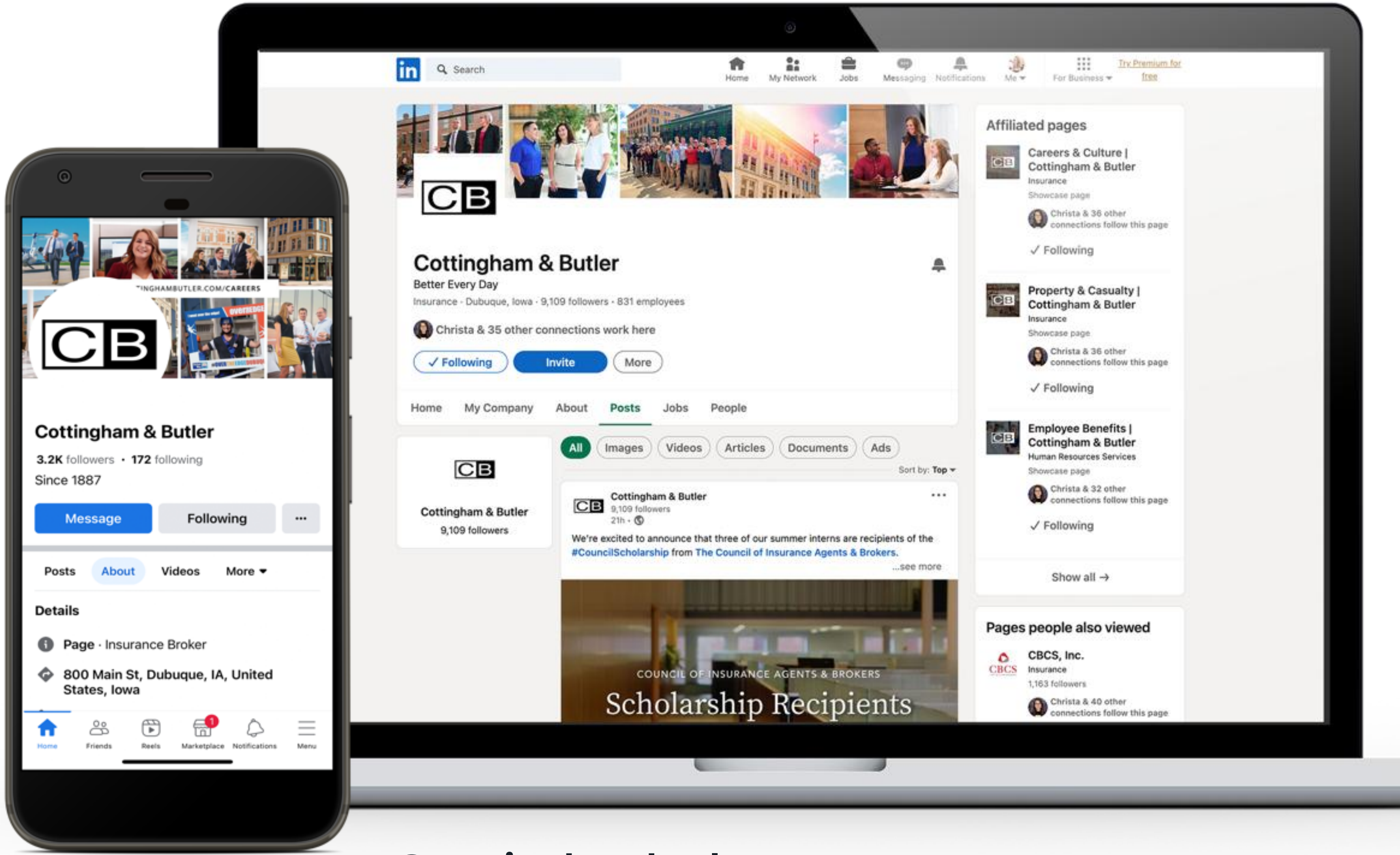
Check the Handbook/Policies

Check Your Employee Handbook/Policies

Benefits Maintained	Premium Issues	Paid Leave	End of Leave
• Which benefits will be maintained during leave? • For how long? • Which cancelled benefits are subject to COBRA or continuation?	• If benefits maintained, what is premium cost? • What are the time frames and logistics for employee to pay? • What happens if the employee fails to make timely payment?	• May/must employee use paid leave during the leave of absence? • Does employee continue to accrue paid leave during leave of absence?	• Will cancelled benefits be restored upon return to work? • What happens to benefits and premiums payments if employee does not return from leave?

Questions

Let’s Stay Connected



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