mp benefits inc.

EMPLOYEE GROUP BENEFITS

Plan Administration Check List

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This guide is for reference purposes only and by no means represents a legal document or counsel, and should not be seen as such. Always consult legal and accounting advice.

The following information is for general reference only. It is not intended as legal or tax advice. You may or may not be affected by any or all of these issues. Changes to interpretations, conventions, legislation or individual company policies may affect these guidelines. Please check with your insurance provider, lawyer, accounting or human resources professional for further information.

From the Beginning

Accurate Enrollments:

Plan member data is information the benefit provider uses to determine the amount of benefit coverage plan members are entitled to receive. This information is also used to calculate the group's monthly premiums.

- ☐ **Date of Hire:** The first day the employee began work.
- ☐ **Waiting Period:** The waiting period is a time of continuous active employment, before the plan member becomes eligible for insurance. This can be "waived" in full or served in full.
- ☐ **Eligibility:** Some plans require employees to work a minimum of 24-hours per week or more to qualify. Please refer to your contract to confirm.
- ☐ **Enrolment:** Plans are typically set with mandatory participation, which requires ALL eligible employees MUST enroll. Only health and dental benefits can be waived IF there is a spousal plan in place (waiving is not applicable to an individual, personal or government plan).
- ☐ **Earnings:** Late earnings updates result in incorrect premium billing and possible reductions to disability and salary-related life insurance benefits.
- ☐ **Employee Classification:** Plans determine benefit levels and qualifications by employee class. Typical classes include "owner", "management", or "all other employees". Each classification may have different benefit levels, risk assessment and enrolment criteria.
- ☐ **Occupation Description:** Occupation descriptions are important to the calculation of premiums for each enrolled member. Changes to job title should be communicated to the benefit provider as soon as they occur.
- ☐ **Termination:** Promptly notify the provider of all terminated employees and their last effective date of employment. When terminations are not reported, premiums continue to be collected and ineligible persons may claim benefits to which they are not entitled. Generally, benefits cease on the date of termination, and legal advice should be sought regarding how to deal with this situation on termination.
- ☐ **Beneficiary Designation:** This should be written by the employee and to avoid issues at the time of claim, a named beneficiary should be over the age of majority.

- ☐ **Signature:** The employee's "inked" signature is required to bind the contract.
- ☐ **Current Date:** The date of signature should not be outside the 31-days window of enrolment as stipulated in the contract. Stale dated contracts may result in the employee being deemed a late applicant and subject to providing evidence of insurability.

Late Applicants:

Plan member's enrolment (or re-enrolment) application for group benefit coverage is to be completed on the date of hire or re-hire. Where required, the form must be signed no later than 31 days after the plan member's first day of eligibility and promptly submitted to the insurance carrier.

Failure of an employer to properly enroll eligible employees may result in potential liability for the employer if the employee's enrolment form is not received by the insurer in a timely manner and the employee is then denied coverage.

If compliance is not adhered to, the plan member seeking benefits will be considered a late applicant and the following conditions affect late applicants:

- ☐ **Coverage NOT Guaranteed:** Coverage for late applicants is not guaranteed. The insurance carrier has the right to approve or decline coverage based on evidence submitted, as well as the right to request additional evidence of insurability information.
- ☐ **Extra Costs:** The late applicant bears the cost of extra medical information required to assess insurability.
- ☐ **Restrictions to Coverage:** The late applicant will only be eligible for benefits once they are approved by the insurance carrier and limitations to certain coverage may exist as penalty.

The Beneficiary Designation:

Choosing a beneficiary of the proceeds payable under a life insurance policy can be one of the most important decisions to be made when developing an estate plan. For many employees, the only life insurance payable on the person is that provided by the employee group benefit plan.

- ☐ **Designation:** The only legal formulary required by life insurance legislation for a beneficiary designation is that it must be made in writing. A witness to the signature is not required.
- ☐ **Revocable Beneficiary:** Generally, the designation of a beneficiary is revocable and may be altered at any time by the insured. It is irrevocable only if the insured so provides in the declaration. However, in Quebec, a declaration in favour of a spouse is presumed to be irrevocable unless expressly stated otherwise. Remember, an irrevocable beneficiary designation cannot be changed without the consent of the beneficiary.
- ☐ **Identifying the Beneficiary:** A beneficiary is best referred to by name, although it is acceptable to describe the beneficiary by relationship to the insured or to the life insured. If there is more than one beneficiary, the share of the proceeds allocated to each should be specified in the declaration. (This may be different in Quebec).
- ☐ **Unclear Designation:** If the designation is not clear as to whom the insured intended to benefit, the law will assist as follows:
    - ○ If the description of the beneficiary is both by name and relationship and there is a conflict, the name will govern.
    - ○ Designation of a "spouse" means a legal spouse and not a "common-law" spouse.
    - ○ A designation in favour of "children" will benefit all children born to the measured by life at the time of death of the life insured, whether or not born at the date the designation was made.
    - ○ Designation of "my heirs", "My assigns", or "my next of kin" will be considered a designation in favour of the estate of the insured and not a designation in favour of certain individuals.
    - ○ Designations should mirror what the employee have in their Wills, otherwise their intentions may not be carried out in this regard.
- ☐ **"In Trust" for Children:** In the common law provinces, insurance legislation specifically provides that an insured may appoint a trustee as a beneficiary. A designation of "X, in trust for Y" does create a trust relationship between X and Y. X will be required to hold proceeds of the policy in trust for Y. With nothing more X will be governed by provincial trustee legislation as to how to invest and administer the trust funds and Y will be entitled to the insurance money upon reaching the age of majority.

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The Contract Worker:

Depending on the answers provided to these questions, it may be an employment rather than an Independent Contractor relationship and employers should seek legal advice to determine how to limit liability.

☐ **Type of Contract Worker:**

- ○ Temporary Employee (hired for a limited employment period; not self-employed)
- ○ Independent Contract Worker (self-employed)
- ○ Other:_____

☐ **Date of Hire:** _____ ☐ **Length of Contract:** _____

☐ **Reason for Contract Over Employee Status:** _____

☐ **Job Duties:** _____

☐ **Employment contract excludes employee from benefit plan eligibility:** (____) Yes (____) No

☐ **Number of hours working per week with the Policyholder:** _____
(Provide details if work schedule is not consistent throughout the contract duration)
_____

☐ **Compensation:** Amount: $_____ per _____
Basis: (___) Hourly (___) Salaried (___) Commissions (___) Other (details:) _____

☐ **An allowance for employment expenses is included in the compensation paid to the employee:**
(___) No (___) Yes (details) _____

☐ **Employer is contributing towards the following programs on behalf of the employee:**
(___) WCB (___) CPP/QPP (___) EIC

☐ **Policyholder remits income tax on behalf of the employee to Revenue Canada:** (___) Yes (___) No

☐ **Policyholder will contribute to the employee's benefit costs on the same basis as s/he does for all full- time permanent employees:** (___) Yes (___) No
(details)_____

The following questions apply to employees designated as "Independent Contract Workers" or "Other:"

☐ **Employee works solely for the policyholder:** (___) Yes (___) No
(details)_____

☐ **Employee performs duties at policyholder's place of business:** (___) Yes (___) No
(details)_____

☐ **Employee furnishes his own equipment or supplies to perform the job:** (___) Yes (___) No
(details)_____

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Reporting Salary:

Life and Disability benefits are based upon an employee's income. To ensure the coverage level is correct, please feel free to use the following guideline when reporting salaries for each insured person.

☐ **Employees:** Where an employee receives a T4 / T4A from the company, income for group insurance purposes would be the same as the T4 / T4A income. This amount reflects all amounts paid to the employee including salary, fees, bonuses and taxable benefits.

☐ **Owners/Shareholders/Key Employees of Incorporated firms:** For these individuals, the insurable income would include all T4 / T4A income as well as T5 amounts:

- Annual Salary / Commissions $ _____
- Management Fees $ _____
- Bonuses, *and* $ _____
- Company Dividends (last two years average from T5) $ _____

Total $ _____

☐ **Commissioned Individuals and/or Owners of Unincorporated Proprietorships and Partnerships:** For these individuals, the insurable income would be based on the "net income" shown under Self Employed Income on the T1 General return as illustrated below. Take the current and prior year amounts, and base the amount of coverage on the average of the two.

Self Employed Income

Business Income Gross	162	$38,000.00	Net	135	$28,500
Professional Income Gross	164	$_____	Net	137	$_____
Commission Income Gross	166	$_____	Net	139	$_____
Farming Income Gross	168	$_____	Net	141	$_____
Fishing Income Gross	170	$_____	Net	143	$_____
Net Income (Current Year)					$_____
Net Income (Prior Year)					$_____
Average of last two years					$_____

Please note: At the time of a disability claim, individuals may be required to confirm their income by providing copies of their current T1, T4 or T5 income tax forms.

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Annual Review:

In addition to the detailed analysis necessary to renew the group insurance program, renewal is also a good time to make sure all coverage reflects current employee information.

Corporately you want to make sure that all employees are insured for the correct level and type of coverage to avoid legal problems in the event of a claim. The following is a checklist, which we hope will aid you in keeping the information current.

- ☐ **Contact information:** Has there been a change in administrators since the last renewal? Is the on-line access up to date and current reflecting new information?
- ☐ **Location:** Has the company moved? Is their new mailing, phone, etc. information to be reported to the provider?
- ☐ **Updated Salaries:** The salaries for all employees should be updated to reflect their current hourly/weekly/bi-weekly/monthly/annual salaries, bonuses, commissions, etc.
- ☐ **Reported Changes:** All employee changes, terminations, additions, including dependents and earnings need to be updated.
- ☐ **Billing Statements:** Does the statement reflect the employees in their correct classification, division?
- ☐ **Updated Records:** To ensure correct coordination of benefits, all dependent information should be updated.
- ☐ **Revised Deductions:** Updated bookkeeping systems to ensure deductions based on renewal rates are reflected correctly for billing and accounting.
- ☐ **Disabled Employees:** Are there any disabilities claims outstanding. Have waivers for premiums been granted, or outstanding paperwork required.
- ☐ **Ages:** Are there any employees over the age of 65 and reduced life insurance. Employees will be removed from disability coverage. At age 70, life insurance will also cease. Check the contract for correct termination ages for all lines of benefits as some benefits will have differing termination ages, while some programs have no termination age for health and dental.
- ☐ **Tax status:** If the life, ad&d, dependent life, short and long term disability benefits are to be tax-free at the point of claim, the employee needs to pay 100% of the premium as a payroll deduction.
- ☐ **Cost Plus:** Are the employers taking advantage of the cost plus (medical reimbursement plan, administrative services only) portion of the plan for claims over and above the core benefits applicable.
- ☐ **Eligibility:** Are all eligible employees enrolled?
- ☐ **Basic Conversion:** All terminated employees should be presented with the opportunity to convert their life and disability benefits (where applicable) into individual policies. This must be done within 31-days of termination.
- ☐ **Direct Deposit:** Are employees aware of the direct deposit option for claim reimbursement?

- ☐ **On-line Access:** Have the employees been made aware of the on-line access to services, claims submission, forms and documents?
- ☐ **Employee Meetings:** Is there a need for employee meetings to update current trends and benefits available?

Taxation Issues:

- ☐ Employer paid group life, CI, AD&D and dep. life premiums are taxable benefits for employees.
- ☐ Long Term Disability benefits are not taxed when received, if the premium is 100% paid by the employee.
- ☐ LTD benefits are taxed if the employer pays ANY portion of the premium unless it is shown as a regular taxable benefit (check with your accountant). Ensure the proper premium is being deducted especially when premium is shared (e.g. 50/50).
- ☐ All employer paid benefits including cost-plus benefits & HSA's are taxable benefits in Quebec.

Liability Issues:

- ☐ Do not have a plan that allows employees to fully opt out. If you insist on a nonmandatory plan, maintaining a signed waiver on file for each employee who declines coverage may provide only limited protection. In the case of waivers, all benefits should be reviewed in full and updated both annually and at status change. Waivers must be signed by spouses and dependents and witnessed.
- ☐ Enroll new hires within the waiting period (usually 3 months) and notify insurer within 30 days of all status changes (e.g. marriage, common-law, separation, birth, salary change, spousal coverage loss etc.) to avoid large back premium charges, late enrolment limitations AND benefit reductions or outright benefit declines and the accompanying employer liability.
- ☐ Consider having a corporate policy to terminate benefits after a prolonged absence— minimum of one-year to meet WSIB/WCB law and often two years (+120 days) based on the change of disability definition. Discuss with an employment lawyer. The better way to limit liability may be to have a policy to maintain an employee on benefits during an absence, but require them to pay 100% of the premium costs.
- ☐ If Cost Plus is used, define the amount and class of employees eligible for this benefit. Check with your accountant regarding use by shareholders due to CRA rule changes.
- ☐ **Obtain Plan/Benefits Administrator liability coverage. This is available as a rider to your general business liability policy from your Property & Casualty/General /Business Insurance broker.**
- ☐ Advise employees in writing of conversion privileges available under the group plan at time of termination. Remind them that the conversion privilege must be exercised within a certain period of time after termination (usually 31-days) or it is lost. Inform the employee of the name and phone number of the insurer so that they may contact them to make an application.

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- ☐ Employees who **resign** should also be made to acknowledge in writing that their benefits will cease, particularly if there are any indications of potential injury or illness. There is potentially a huge liability for employers if and employee tries to make a disability claim and their benefits have been cancelled. If there are illness or injury issues, alternate arrangements could be canvassed.
- ☐ Make sure benefit booklets are up to date and accurately reflect the terms of the benefit plan. Ensure any changes to the plan are communicated to employees in a timely manner.
- ☐ Confirm that employees receive the maximum life & ltd amounts that they are eligible for using the definition of earnings shown in the policy. Obtain a signed waiver from the employee if they choose not to apply for additional Life or LTD benefits (above the Non-Evidence Maximum).
- ☐ If making offers of employment (or terminating an employee), do not offer any benefit coverage (or extension) until you have checked with your broker/insurance company and lawyer as to what coverage (if any) may or may not be available.
- ☐ Advise employees in writing that the company reserves the right to discontinue or alter employee benefits at any time. This should be included in the contracts and/or policies the employee signs.

Privacy & Confidentiality Issues:

- ☐ The Personal Information Protection and Electronic Documents Act (PIPEDA) came into effect Jan. 1 2004 and is designed to protect an individual's right to privacy. This law restricts the type and amount of personal information available to employers.
- ☐ All plans should have a drug card, allow online claims submission, and allow claims to be mailed directly from the employee to the insurer and cheques returned privately to the employee.
- ☐ Claims Experience Reports (by employee) should NOT be maintained on file by employers.
- ☐ Have employees, NOT the employer retain a copy of receipts & claims submitted. Have staff complete (and keep a copy for themselves) and forward Employee Statements of Health/ Evidence of Insurability forms directly to the insurer. Do NOT keep a copy of SOH/EOI forms.

Administrative Issues:

- ☐ Obtain a signed letter from each employee acknowledging that employee benefits are mandatory and allowing payroll deductions if the premium is shared. In most cases, total premium must be at least 50% paid for by the employer.
- ☐ Maintain copies of enrolment, termination, and change forms and all correspondence to the insurer.
- ☐ Many plans will not allow sub contractors to be included without a separate class, if at all. Typically, benefits are reserved for full time T-4ed employees.

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- ☐ Ensure all salary changes and employee terminations are reported promptly.
- ☐ Continue benefits during required legislative leaves (Pregnancy and Parental). Consider the implementation of a policy on cost-sharing.
- ☐ Ensure disabled dependent children, or over age children attending post-secondary school complete the proper forms in order to maintain coverage.
- ☐ Ensure all staff and dependents are covered by either their provincial health plan or an insurer approved Provincial Plan Replacement (PPR) policy to be eligible for benefits.
- ☐ Ensure premiums are paid on time and as billed. Insurers have EFT (auto withdrawal) programs to make payments easier. Premiums in arrears lead to suspensions, denied claims and increased liability for the employer. This situation is critical if employees are making contributions to the plan, as failing to remit could place the employer in the role of insurer.
- ☐ Inform your broker and insurer ahead of time, of any and ALL absences that may lead to a WSIB/WCB or LTD claim (usually within 5-6 weeks of last day worked).
- ☐ Remind staff that they MUST call the insurer IMMEDIATELY in the event of an out of province/country emergency. Some group insurers have instituted health stability clauses, pre-existing medical conditions and travel restrictions that can leave staff with NO coverage if they have changed meds, have outstanding tests or results, or are travelling to areas with government travel advisories.

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Moving and Merging Benefits:

Unless otherwise requested, there should be no "loss of coverage" to the employees in moving from insurance provider to another for Life and Disability.

Life and Disability:

- ☐ Are there people on Maternity (or other) Leave–Top up program? Opt outs?
- ☐ Are any employees on presently on a LTD claim? Enrolled in H&D plan? WOP? Have no life/LTD premium listed on current billing statement?
- ☐ LTD Settlements (after decline & suit), still on plan? Return to work?
- ☐ Staff using Employee Assistance Programs (EAP)? Transition at change?
- ☐ LTD pre-ex is grandfathered at merger
- ☐ The non-evidence maximum re-set. Is there a loss of coverage?
- ☐ Include current billing statement to confirm grandfathered amounts
- ☐ Grandfather Life & LTD coverage at change

Health & Administrative:

- ☐ Ensure the waiting period is waived
- ☐ Paramedical Professional Services – Paid by Hour, lump sum maximum per visit, or by Treatment
- ☐ Grandfather drug coverage – Prior Authorization
- ☐ Mandatory Specialty Pharmacy
- ☐ Mandatory Generic Substitution
- ☐ Least Cost Alternative Formulary
- ☐ Mandatory Biosimilar Substitution
- ☐ Dispensing Fee Caps
- ☐ Provincial or National Drug Formulary
- ☐ Drug Cap in place? Specialty formulary?
- ☐ Undisclosed Catastrophic claims. Pooled or experience rated renewal?
- ☐ Grandfather/remove hospitalization for dependents clause
- ☐ People traveling during changeover
- ☐ Ensure that split plans (more than two benefit providers) have alignment of WOP and disability EP's
- ☐ Perform employee audit if a split/multi carrier plan
- ☐ Only properly defined employees are on the plan
- ☐ In and Expatriate coverage? PPR? LTD limitations?
- ☐ Have terminated or WOP staff been notified of conversion options?
- ☐ Survivor benefits carried forward?
- ☐ Paramedical reimbursement set to Reasonable & Customary (R&C) Limits
- ☐ Vision benefit used for laser eye surgery?
- ☐ Accidental Dental still in place?
- ☐ EAP—employee assistance programs—what about those in treatment at time of change?

- ☐ Prior Authorization after changing carriers?
- ☐ Grandfathering specialty drugs…if you can?
- ☐ Mandatory Generic vs Generic substitution
- ☐ Biologic to mandatory biosimilar substitution
- ☐ Mandatory specialty drug pharmacy use?

Employment Standards Code:

On June 7th, 2017, the Fair and Family-Friendly Workplaces Act (Bill 17) received royal assent. This act sets out changes to Alberta's two major pieces of employment and labour legislation: The Employment Standards Code and the Labour relations Code.

In all of these cases, the employer can not terminate or lay off employees while they are on leave. Employers must reinstate employees returning from leave to their previous position or alternative work of a comparable nature.

The following summarizes the proposed changes for January 2018:

Leave of Absences:

The Employment Standards Code currently contains a few mandatory leaves: maternity, reservist, and compassion care—where employers are required to keep positions available for employees. In addition, the following highlights the changes to the existing leaves as well as the new ones to also be covered under the same provision.

- ☐ **Maternity/Parental Leave:** entitlement begins after 90-days of employment, rather than one-year and the leave has increased to 16-weeks.
- ☐ **Compassion Care Leave:** entitlement begins after 90-days and the possible length has been extended from 8-weeks to 27-weeks. The changes remove the requirement that the employee seeking the leave be the "primary caregiver" of a seriously ill family member.
- ☐ **Death or Disappearance of Child Leave:** if an employee's child dies or goes missing, employees are entitled up to 52-weeks if the child disappears as the probable result of a crime and up to 104-weeks if the child dies as a probable result of crime.
- ☐ **Critical Illness of Child Leave:** if an employee's child becomes critically ill, the employee is entitled up to 36-weeks of leave.
- ☐ **Long Term Illness and Injury Leave:** employees will be entitled up to 16-weeks of leave, per calendar year for illness, injury, or quarantine with a medical certificate of proof.
- ☐ **Domestic Violence Leave:** employees who are victims of domestic violence will be entitled to up to 10-days of leave.
- ☐ **Personal and Family Responsibility Leave:** up to 5-days of leave per years for employees where it is necessary for the health of the employee or for the employee to meet their family responsibilities in relation to a family member.

- ☐ **Bereavement Leave:** up to 3-days of bereavement leave on the death of a family member.
- ☐ **Citizenship Ceremony:** employees are entitled to up to a half-day leave to obtain a certificate of citizenship.

Overtime:

Bill 17 makes two key changes to overtime agreements with respect to employees taking time in lieu of overtime.

- ☐ Time in Lieu will have to be taken within 6-months of when earned, rather than 3-months
- ☐ Instead of the previous provision whereby In Lieu was hour for hour, now for every hour of overtime, employees will be entitled to 1.5-hours In Lieu.

Averaging Agreements:

Compressed work weeks, which permitted employees to work up to 12-hours a day without being paid overtime will be removed. Instead, employers can enter into an averaging agreement with one employee or a group of employees which can cover a cycle of up to 12-weeks in length, averaging the employee's hours over that cycle. This must:

- ☐ Be in writing
- ☐ Provide a start and an end date for terms less than two years
- ☐ Specify the number or weeks which will be averaged
- ☐ Specify the scheduled daily and weekly hours of work up to the 12-hours a day and 44-hours per week
- ☐ Set out the manner in which overtime pay or time off with pay will be calculated

Holiday Pay:

Employees become immediately eligible for holiday pay. They will no longer be required to work for 30-days before entitlement.

Administrative Penalties:

Bill 17 contains new administrative penalties to allow for up to $10,000 in fines per day for each contravention.

Review of Policies, Contracts, Procedures:

Due to the enhanced risk of liability, all employers should review their policies and procedures to ensure compliance. Any contractual existing policies and procedures that do not meet with the new minimum requirements will be void and unenforceable.

- ☐ Employment Contract
- ☐ Corporate Policies
- ☐ Corporate Contracts

Odds and Ends:

Employee's T4:

- ☐ Box 85 on T4—Employee-paid premiums to a private health services plan (EHC and Dental) are considered qualifying medical expenses and can be claimed by the employee on his or her income tax and benefit return. Include the amount that the employee paid on a T4 slip in the "Other information" area under code 85. The use of code 85 is optional. If you do not enter code 85, CRA may ask the employee to provide supporting documents.
- ☐ 18-month maternity leave, will the insurer extend benefits without an amendment? During the longer duration, benefits are reduced to 33%.

Carrier Change:

- ☐ Was the Non-evidence maximum for Life and LTD reset?
- ☐ Obtaining a "market evaluation" while pretending to be a group with no existing coverage creates a huge liability risk for the employer
- ☐ There are no health two benefit plans the same
- ☐ Employees on LTD during a plan move
  - ○ Don't forget to enroll those on claim for Health & Dental
  - ○ Don't forget to provide waiver of premium to new company
  - ○ Ensure no life & LTD premium is being charged
  - ○ Ensure employer maintains communication and contact to ensure continuity of coverage

Travel Insurance:

- ☐ Pregnancy **No coverage** after 32 weeks - **No Air travel** after 36 weeks
- ☐ Remember, even though the doctor may say she is okay to travel, if there has been any change in health in the three months prior to your departure that are related to the condition you require assistance for under the Travel Emergency Assistance Program, that condition may not be considered medically stable.
- ☐ No coverage is provided for Medical Care for any Accident sustained by a Person Insured while participating in a dangerous sport or activity. Dangerous sports and activities include, but are not limited to: off-trail skiing and snowboarding, bobsled, luge, skeleton, motor vehicle racing, obstacle jumping, rock climbing, mountain climbing, parachuting, gliding, hang-gliding, skydiving, bungee jumping, canyoning, scuba diving without certification, spelunking, any sport or activity for which remuneration is provided, any sport or activity for which money prizes are awarded, and any extreme sport or activity. ***This limitation does not apply to sports and activities normally offered to members of the general public without requiring any special qualifications or training.***

Plan Conversion:

- ☐ Remind employees of applicable conversion option
- ☐ When do they convert? 31 or 60 days from… The last day of employment? At the end of the PILON period? Or is it at the end of severance period?
- ☐ What about when on disability or WOP ends?
- ☐ Conversion option is 31 days from **loss.**
- ☐ Maintain copy of old (3+ months ago?) billing in the event of an LTD claim in the year after change.

Split Plans:

Split Plans are when there two-to-three difference insurers/providers involved in the benefit plan.

- ☐ Often enrolment is only partially completed and bills don't match resulting in employees being left off plan Perform annual audit to avoid gaps
- ☐ Split STD/LTD can lead to different adjudication, problems with WOP definitions and waiting periods.

Legalities:

Employer Liability in the administration of Benefit Plans:

Summarized from Blaney McMurtry LLP, May 5th, 2015 publication

1. Obligation to Extend Benefit Coverage Upon Termination of Employment

Absent an express term to the contrary, most contracts of employment contain an implied provision that they can only be terminated for just cause or, in the absence of just cause, upon reasonable notice. The amount of reasonable notice that must be given varies from employee to employee as it is based upon factors which affect the employee's ability to find comparable employment such as the employee's age, length of service, level of responsibility and salary.

If an employer fails to provide reasonable notice of termination, it is liable to an employee for all damages suffered as a result of that failure. Normally these damages are the value of the employee's lost salary and benefits during the notice period less the amount that the employee earns during that period from alternative employment.

The Employment Standards Act prescribes minimum notice periods applicable to all employees. The length of these periods is based upon the employee's years of service with the employer. Under the Act, employers are required to provide a minimum period of salary continuance and benefit coverage. (This statutory notice period is usually less than the reasonable notice period required by common law). During this minimum notice period, employees are "deemed" to be in the active employ of their employer for the purposes of interpreting the policy of insurance and establishing eligibility for coverage by virtue of Section 62(1) of the Act.

Some employee benefits may not be continued after the expiration of the statutory notice period because, by their terms, they are available only to employees in the active employ of the company. The most common example of this type of insurance is long term disability.

Normally employers and employees negotiate severance packages at the time of termination. In these severance packages, it is clearly stated that certain benefits will not be continued after the expiry of the statutory notice period. In exchange for the severance package, employees are usually required to sign a release. In this way, the employer is protected from any further liability should the employee have a claim under one of these discontinued benefit plans.

However, situations do occur where the parties are not able to successfully negotiate a severance package. In these cases the employee may sue the employer for damages for wrongful dismissal and claim all salary and benefits that the employee would have received had the employee been given reasonable notice of termination. If the employee becomes disabled during the notice period, the employee's claim for damages could include a claim for all disability benefits the employee would have received had the employee been given reasonable notice. In cases of catastrophic disabilities these damages can be enormous.

2. Misrepresentation by Employer of Employee Benefits

Employers have an obligation to describe the extent of employee benefit coverage accurately. Employer liability can occur both in situations where the benefits summary booklet inaccurately describes the terms of the benefit policies from the insurance company, and, where an employer misrepresents the nature of benefits in an offer of employment or a contract of employment. An employee has a claim for the benefit coverage stated in the contract regardless of the terms of the actual benefits policy. If the terms of the policy are not the same as those represented by the employer, the employer may face liability for the coverage described in the contract of employment.

3. Liability for Negligence in Administering Benefit Policies

Employers often act as administrators of benefit policies on behalf of insurance companies. In this respect, they are acting as agents for the insurers. Employers often deliver policy booklets to employees, assist in completion of application and claim forms and collect premiums on behalf of the insurance company.

4. Employer Liability Under Collective Agreements

In unionized settings, collective agreements usually make some provision for employee benefits. These provisions take a variety of forms. Some simply provide for the payment of the premiums for benefit coverage. However, others contain provisions listing the extent of the coverage to be provided to employees.

Arbitrators have classified benefit plans in collective agreements into four categories:

1. The benefit plan is not mentioned in the collective agreement;

2. The collective agreement specifically provides for the payment of benefits in certain circumstances;

3. The collective agreement provides only for the payment for the premiums for the benefit plans; and,

4. The policy or insurance document is incorporated by reference into the collective agreement.

Benefit plans falling within categories 2 and 4 must be enforced through the grievance procedure.

An employer may be found liable to an employee if the benefits carrier does not provide the employee with the benefits described in the group policy. The Supreme Court of Canada has made it clear in Weber v. Ontario Hydro, (1995) 2 S.C.R 929 that these issues must be dealt with through the grievance procedure. As a result, an employer may be found liable to an employee for benefits even after an insurance company has rejected an employee's claim.

Traditionally employers were of the view that if the collective agreement fell under category 3, they were immune from liability as long as they paid the required premium for benefits coverage. Employees had to address all other issues in connection with benefits with the insurance company. This is not necessarily the case.

5. Vested Rights

Cancellation of benefit plans can also raise a number of liability issues. The Supreme Court of Canada held in Re Dayco (Canada) Ltd. v. C.A.W. Canada (1993), 102 D.L.R. (4th) 609; (S.C.C.) that retirement benefits offered under a collective agreement vested in the employee at the time of retirement such that the employer could not cancel these benefits. The Supreme Court of Canada held that this was the case even though there was no longer a collective agreement in effect which provided for these rights.

However, in the more recent decision of Mercury Graphics (2010), 83 CCEL (3d) 285, an arbitrator held that an employer was not obliged to provide benefits that had vested under a collective agreement that had expired. The collective agreement had contained a provision that employees were entitled to severance pay of 2 weeks' pay for every year of service.

The collective agreement had terminated as a result of a strike/lockout. Subsequently, the employer closed its plan and terminated 85 employees. The union filed a grievance requesting severance pay. An arbitrator held the matter was not arbitrable because in order for the severance pay to become a vested right there would have to be a crystallizing event such as severance before the collective agreement expired.

6. Ontario Human Rights Code

The Ontario Human Rights Code prohibits discrimination in employment based upon race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, same-sex partnership status, family status and disability.

The Code provides that it is not a violation of the right to equal treatment with respect to employment where employment is denied or made conditional because enrolment in a group insurance plan is required even though the plan makes a distinction based upon a prohibited ground of discrimination.

The Code also exempts some contracts of group insurance provided they comply with the Employment Standards Act, 2000. However, the eligibility requirements of some benefits plans may still be found to be discriminatory. In Thornton v. North American Life Insurance (1992), 17 CHRRD/481 an employee was diagnosed by his doctor as being HIV positive, within the first 90 days of his employment. Six months later, he developed the symptoms of an AIDS related illness and was no longer able to work. The insurer denied the employee any LTD benefits on the basis that the insurance policy contained an exclusionary clause for preexisting illnesses and illnesses for which the applicant received medical care within the first 90 days of employment.

A Board of Inquiry appointed under the Human Rights Code found that the insurance company did not violate the Code and acknowledged that it would be uneconomical for an insurance company to be forced to provide coverage in this case. The decision was upheld by the Divisional Court at (1995), 28 C.C.I.L. (2d) 4. The employer in this case was a small employer having fewer than 100 employees. The cost of providing LTD coverage to persons with pre-existing illnesses was prohibitive. However, one wonders what the result would have been if the employer had been a larger employer.

As the cost of benefit coverage increases, many insurance companies and employers are looking at ways of controlling costs by limiting the type of benefit coverage provided. This is especially true in the case of drug plans. Increasingly these plans are limiting the types of drugs that will be paid for by the plan. These limitations have not yet been challenged in Canada, but they have been in the United States. For example, in Krauelv v. Iowa Methodist Medical Center (1996), 95 F (3d) 674, a woman claimed that her medical plan discriminated against her based on handicap because it excluded coverage for fertility treatments. The court denied her claim holding that infertility was not a disability. It stated that disabilities were conditions that "limit a major life activity" such as cancers, muscular dystrophy and kidney diseases. One can see that it is only a matter of time before employees challenge their insurer (and their employer) because a policy does not cover certain treatments for these disabilities.

7. Fiduciary Obligations

Employers have also been found liable for failure to bring the terms of benefit policies to the attention of their employees.

SUMMARY

As the relationship between employers and employees become more complex we can expect to see increasing obligations being placed upon employers towards their employees. In the field of employee benefits, employers are expected to administer the benefit plans fairly, accurately and efficiently. A failure to do so may lead to liability far in excess of the cost of providing the appropriate benefit coverage.

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