



By David Leo, President of WMI Mutual Insurance Company & WMI TPA

When Being Nice Can Backfire ... Big Time!

Every year, I send our groups a memo to remind them why it is important that they not allow ineligible individuals to participate on their group benefit plan, and to warn them of the potential risks and liabilities they face if they do. Inevitably, the employer's response is something like "I was just trying to be nice" or "I felt it was the right thing to do." Since allowing ineligible individuals to participate in a group health plan can have significant civil and even criminal consequences for a company and its principals, I'd like to share my memo with all WPMA members companies. As always, if you have any questions or would like to discuss this article or your company's benefit program, feel free to contact me.

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Over the years, I have seen many instances where employers have allowed individuals to participate in their group health insurance plan even though the individuals do not satisfy the specific eligibility requirements of the policy. There are many ways in which this might occur, but the most common are:

- (1) allowing an employee to participate in the plan even though he or she does not actively work the required number of hours or otherwise satisfy the employer's eligibility criteria;
- (2) allowing an ineligible family member to participate in the plan;
- (3) allowing a terminated employee to remain on the plan after termination or retirement;
- (4) allowing an employee's former spouse to remain on the plan;
- (5) allowing an employee's dependent child to remain on the plan after the child no longer qualifies as a dependent; or
- (6) adding a relative's child or a grandchild that does not satisfy the criteria of a dependent under the policy.

Federal and state laws are clear that individuals who do not satisfy the eligibility requirements of a group health insurance policy are prohibited from participating in the plan. This is true whether the individual is an employee or a dependent, and regardless of

whether the employer is aware of, or otherwise allows, the improper participation to occur. Employers have an obligation to notify WMI when participants lose eligibility, and any person who illegitimately participates in a group health insurance program can be charged with insurance fraud and subjected to criminal and civil penalties. These charges and penalties, along with the possibility of regulatory action by the United States Department of Labor, may also be levied against companies and individuals who knowingly or willingly allow or participate in this conduct.

In addition to the potential criminal and civil liability, it is important for financial reasons that employers maintain the integrity of the insurance policy's eligibility criteria. Specifically, like virtually all insurance companies, WMI contracts with licensed reinsurance carriers to provide financial protection for claims once they reach a certain dollar threshold. When a person's claims hit the reinsurance retention level, the reinsurer will usually perform a detailed audit to ensure coverage eligibility before they accept liability on the claims. If the reinsurer discovers an individual was ineligible to participate in the plan but was improperly allowed to participate, it is quite possible that the reinsurer will deny the claim and leave the employer (and other involved individuals) responsible to pay the claims.

If ineligible individuals are currently participating in your company's group health insurance plan, it is imperative that you discuss this matter with your legal counsel and to take appropriate action to immediately rectify this problem.

If you have questions about this article or would like to discuss your company's health insurance program, feel free to contact me at (801) 263-8000 or info@wmimutual.com.