

Waiving Insurance Waiting Periods Can Have Unintended Consequences!

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An important part of any group health insurance plan is the waiting period. This is the period of time that must pass before coverage can begin for an employee or dependent who is otherwise eligible to enroll in the plan. In the past, employers were generally free to impose any waiting period requirement they wanted, as long as it was applied consistently and didn't violate other applicable laws (e.g., the prohibition against discrimination).

Since 2014, when many provisions of the Affordable Care Act became effective, employer waiting periods have been limited to a maximum of 90 calendar days (even if the 90-day period is satisfied in the middle of a month). In order to ensure that waiting periods are applied fairly and consistently, the federal law known as the Employee Retirement Income Security Act ("ERISA") requires that plan administrators (i.e., employers) must administer their health insurance program in accordance with the specific plan terms. This includes uniformly applying waiting period requirements. These laws apply to fully-insured and self-funded benefit programs alike, and inasmuch as they are federal laws, they preempt contradictory state laws.

Notwithstanding the general laws against the willy-nilly administration of health insurance benefits, many employers still arbitrarily administer their waiting periods by waiving them for some employees and imposing them on others. Although this may seem like a nice gesture for the new employee who benefits from the waiver, it's rife with risk because it violates the explicit terms of ERISA and circumvents ERISA's objectivity requirement. It also may subject the employer to serious liability, including the possibility that the employer could have to pay the claims of other employees who might demand equal preferential treatment. In other words, waiving the waiting period for some employees but not others may invalidate the waiting period altogether; but without insurance coverage in place, the employer could be forced to pay those claims out of company funds.

If a company is dissatisfied with its waiting period, it is free to change it. While this is the preferred way to deal with waiting period remorse, many employers don't want to modify their waiting period for all plan participants, choosing instead to waive the waiting period requirements on a case-by-case basis. Because an employer's decision to waive a waiting period undermines the integrity of the employer's plan (and may constitute a violation of the employer's fiduciary obligation under federal law), I strongly recommend against it. At a minimum, employers should consult with competent legal counsel (an oxymoronic term, I know) before going down the dangerous road of waiting period waivers. Nonetheless, if after such consultation, the employer still desires to waive the waiting period, here are just a few extremely important issues that must be considered:

1. Waiving a waiting period for some employees and not others can expose the employer to civil liability (and in some cases, criminal liability and penalties). Additionally, such action can expose the involved individuals to personal liability for losses caused to the plan.

2. Arbitrary administration of benefit waiting periods can invalidate the waiting period altogether.
3. Arbitrary administration of waiting periods can result in employers extending benefits to ineligible employees and their dependents. In the event of a claim for benefits when the employer has extended eligibility to an ineligible participant, the insurance company may refuse to recognize such an informal plan modification and deny claims. This could leave the employer financially responsible to pay those claims, which could be in the hundreds of thousands of dollars.
4. Inconsistent benefits administration hurts employee morale and may even support claims of employee discrimination.

If you have any questions about this article or would like to discuss your company's insurance program, please feel free to contact me. I would also invite you to visit our website at www.wmimutual.com for other interesting articles and helpful information about group health insurance.