# Continuation of Health Benefits on Unpaid Leaves Can Cause Stop Loss Coverage Headaches

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Any employer who allows an employee who has worked less than 12 months for the employer to take an unpaid leave of absence and continue their health insurance under a self-funded group health plan should use care, as the stop loss carrier or insurance company may not recognize the employee's unpaid leave as continued employment. Generally, when an employee takes a leave of absence under the Family Medical Leave Act (***"FMLA"***), the employee is allowed to continue their health coverage for up to 12 weeks, even if the leave is unpaid. These FMLA protections only apply to employees who have worked at least 12 months for their employer. Unfortunately, illness and injury are unplanned, and employees often must miss time during their first year of employment.

Sometimes employers, in trying to help an ill or injured employee, will provide the employee with an unpaid leave of absence and continue the employee's active employee coverage during the period of unpaid leave. Unless the employer wants to modify its handbook and plan documents (and for self-funded plans, stop loss coverage) to provide continued active coverage during an unpaid leave, the employer instead should consider categorizing the coverage during the unpaid leave as COBRA coverage. Failure to do so could result in the stop loss carrier or insurance company denying claims during the period of the unpaid leave, as the employee was not actively at work, on a protected leave, or on COBRA. The employer can still choose to pay all or a portion of the premiums for the employee during the unpaid leave, and by properly characterizing the coverage as COBRA, the employer will reduce the risk that claims are later denied.

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