
29 C.F.R. § 825.209

Maintenance of employee benefits.

(a) During any FMLA leave, an employer must maintain the employee's coverage under any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. All employers covered by FMLA, including public agencies, are subject to the Act's requirements to maintain health coverage. The definition of group health plan is set forth in § 825.102. For purposes of FMLA, the term group health plan shall not include an insurance program providing health coverage under which employees purchase individual policies from insurers provided that:

- (1) No contributions are made by the employer;
- (2) Participation in the program is completely voluntary for employees;
- (3) The sole functions of the employer with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and to remit them to the insurer;

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