



INSIGHTS

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ISSUED QUARTERLY

IN THIS ISSUE...

Benefits during Leaves of Absence

- Are employers obligated to provide Employee Benefits, and if so, to what extent?

Anti-Aging Therapy

- Evidence suggests that **physical activity** can beat a medicine cabinet full of anti-aging products.

Are you obligated to provide Employee Benefits during Leaves of Absence?

Most short and long-term disability benefits cease to provide coverage when the employee's employment relationship is terminated or ended for any reason. This exposes the employer to a significant risk if the employee is terminated during the notice period. But, is this risk also present when an employee is on leave?

Employers often wonder what their obligations are with respect to continuing to provide benefits for employees while they are on a leave of absence. There are many factors that must be taken into consideration in order to determine what the employer's obligations are for benefit continuation while an employee is on a leave of absence, and it's complicated further by the fact that legislation varies by province with regards to benefit continuation.

Employers must distinguish as to the 'type of leave' that the employee is going to be on. Is it a legislated leave? Is it a sick leave due to workplace injury or illness? If the leave is a legislated leave (the employee is entitled to the leave by law), then the employer generally has an obligation to maintain the employee's benefits during the period of the leave, subject to any cost sharing arrangement already in place. If the employee chooses not to maintain their share of the cost of the benefit, then the benefits can be discontinued, but experts suggest having this in writing from the employee.

Common types of leaves that fall under a 'legislated leave' are: maternity, parental, adoption, compassionate care, and emergency leave, to name a few. Some legislation also requires the



employer to maintain benefits for a certain amount of time, such as Ontario's WSIB Act, which states that employers must continue coverage for a minimum of 12 months when an employee is unable to work due to a workplace injury or illness.

For 'non-legislated leaves', the requirement to maintain benefits is at the employer's discretion, but consultation with your lawyer, your benefit advisor and your insurance carrier are advisable. Sick leave is a case in point. Although there may not be a legal requirement to maintain benefits, employers need to be careful under Human Rights legislation not to discriminate against an employee due to a disability. Does that mean employees are entitled to the benefits for life if they become unable to do their job? Probably not, but getting the advice of a lawyer who specializes in this area would be prudent, as they can advise what needs to be done on behalf of the employee, and how to ensure the company is protected from a potential lawsuit.

...continued on reverse

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Exercise is the Best Anti-Aging Therapy

A new study in England on older cyclists found that a lifetime of regular exercise gave them the physique of much younger people, providing evidence that physical activity can beat a medicine cabinet full of anti-aging products.

The multi-billion dollar anti-aging industry provides a cornucopia of products that promise to fight off the ravages of time with food supplements, diets, creams, and a host of gadgets that supposedly remove toxins from the body. It makes it sound like all we need to do is pop a pill and our lives will be extended.

When our bodies do begin to slow down and diseases creep in, another huge industry of pharmaceuticals and therapies take over to fight it off. Our aging society is spending a lot of money trying to fight off old age. But the cheapest and oldest therapy for an aging body is good old exercise. Sadly it's the one prescription many people are not taking.

A British study compared amateur cyclists age 55-79 to a group of adults in the same age range who did not exercise regularly, as well as young adults aged 20 to 36. Smokers and heavy drinkers were not included.

In laboratory tests, the active seniors were found to have retained muscle mass, and had lower cholesterol levels, which is to be expected. Surprisingly, some parts of their immune systems were as robust as those of the younger people. In normal aging, the body's production of T-cells, which are the immune system's soldiers who patrol through the blood and fight off invaders, can slow down. That didn't happen in these active seniors. The men in the group also showed robust levels of testosterone, which also tends to decline with age.

This experiment was unusual, in that it looked at the positive effects of exercise on healthy individuals, rather than more common studies that look at the ill effects of sedentary life. The health benefits of regular exercise for the general population are well known. With a recommended 150 minutes of moderate exercise, such as brisk walking, or 75 minutes of vigorous exercise a week, you can control weight, improve sleep, lighten your mood, boost your energy level and even improve your sex life. You'll also reduce the risk of cardiovascular disease, type 2 diabetes and some forms of cancer.

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According to Statistics Canada, only about one in five Canadian adults reaches that 150 minute recommended target, and the stats are much worse for older age groups. The World Health Organization says inactivity is a major cause of premature deaths.

That weekly exercise does not necessarily mean you need to join a gym or sign up for a marathon. It can be easily incorporated into everyday life by giving up elevators and escalators in favour of stairs. Choose your feet over wheels as much as possible and when you do walk, make it brisk rather than just ambling along. The benefits of getting off your butt are clear, and best of all, you can do it for free.

Source: CBC, Bob McDonald - March 2018

Benefits During Leave of Absence... continued from reverse

Having corporate policy in place that clearly outlines what your company's rules are as it relates to benefits continuation for legislated and non-legislated leaves is not only essential, it's smart. It needs to be fair, and consistently applied from one employee to the next.

Employers have done variations of the following:

- Maintain benefits for a specific period of time from the date of the illness or injury. Your lawyer can advise on this
- Match Workers Compensation rules for maintaining benefits. In other words, an employer treats all illnesses/injuries the same, regardless if the illness or injury is work related or not
- Maintain benefits for up to 24 months to match the own occupation definition found in the long term disability contract or booklet
- Maintain benefits for the elimination period of the long term disability benefit

Whatever decision is made, it needs to be put in writing and given to all employees who have benefit coverage. This can be done in the employee handbook, and/or by a separate standalone policy. When an employee goes off on leave, you should remind them, in writing, of your policy as it relates to their benefit continuation. It wouldn't hurt to send them another letter prior to terminating their benefits so they have sufficient time to have alternative arrangements in place.

All employers prefer to avoid the risk and expense of fighting these issues in court. The sympathy of the court will generally lie with a recently terminated employee who claims to be disabled. Spelling out what is and isn't covered will go a long way in protecting an employer should a terminated employee decide to sue upon becoming disabled.

Ignorance of the law isn't a defence. Having the right advisors and policy wording in place to assist you is.

Until next time...

Source: Benefits Canada