INSIGHTS

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ISSUED QUARTERLY

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The Unexpected Liability

Maybe it's just part of the territory, but as I get older I appreciate just how much I have forgotten. Of course, you can't appreciate how much you've forgotten until you are reminded that you once knew it. If that is one of life's ironies, I can hardly wait for the remainder of my life to learn what a genius I was when I was 50.

Here is a case in point. I came across a memo I had written several years ago advising employee group plan sponsors about certain issues that were not well known, even by benefit specialists. I had forgotten all about it until it was presented to me for review. It is not a timeless classic, but the message is as important today as it was then. It deals with a topic we should all be concerned about – the unexpected liability. The liability that you are personally responsible for, but you just don't know about it. Here are a few examples for you to mull over. The examples are ones that our administration team deals with every day.

Group Life & Long Term Disability Insurance Waiver of Premium

This provision allows the group life and disability insurance to remain in force for a disabled employee with no premium payment either by the policy holder or the insured employee. It must always be applied for on the forms provided by the insurance company, and the applications should be submitted as soon as possible after the disability has occurred – ideally within a few weeks of the disability. Often this provision is overlooked, robbing plan sponsors and the individual of valuable protection, as well as making it difficult to transfer the plan to another carrier because the new carrier doesn't want to assume the liability for either the life or long term disability for the disabled plan member. This oversight could occur because the life and long term disability benefits are with two different carriers and the waivers are not simultaneously adjudicated. It could also occur due to the employee being disabled from a work place accident or sickness, and the disabled individual is collecting disability benefits from Workers Compensation/WSIB, but the group life and health insurance carrier is not notified so the waiver of premium isn't applied for in a timely fashion, or perhaps never at all.

Is Everyone Who Is Eligible To Be On The Plan On The Plan?

Plan participation should be mandatory for all employees. Insurance carriers have their own requirements for participation, but employers should make it necessary that every full-time, eligible employee be on the plan for life and long term disability insurance. No exceptions – ever. The reason is simple, the risk to be sued by the employee or their estate for not having this protection is mitigated.

Are You Mandating That Employees Who Are Eligible For Coverage Beyond The Non Evidence Are Applying For It?

You should. The group life and long term disability insurance plan usually has a certain level of coverage which is available to each plan member on a non-evidence (no questions asked) basis. Any additional amounts that the employee may be eligible for will require that health/medical information be submitted to the insurance carrier and approved by them. In some instances the employer doesn't advise the employee of this opportunity, and sometimes even when the employee is advised they do not respond to the request. In the event of a death or disability an employer may face litigation from the employee or their estate because it is deemed that due to error or neglect on the part of the plan sponsor the employee was not given the opportunity to apply for this additional coverage. Document, document, document. Documentation should show the employee was notified of their eligibility for coverage beyond the non-evidence limit and that the employee either did or did not submit the required health information. It should show whether it was approved or declined, and the employee was properly notified of this. If the employee elects not to

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3 life insurance liabilities to keep in mind

Plan sponsors are no strangers to the courts for liabilities over life insurance claims. The following are three liability concerns and how to mitigate them.

Liability #1
NAAW employees (Not Actively At Work)

All insurance contracts state that employees who are "not actively at work" (NAAW) are ineligible for coverage, because of the risk involved. Insurance companies don't ask medical questions when a company purchases benefits; they assume that people who are actively at work are healthy and pose no significant underwriting risk. Anyone falling outside of that realm presents new risks that were not agreed upon when the policy began.

Any employee who takes time off—apart from sick days, scheduled vacations and maternity leave—is considered NAAW. Grey areas such as compassionate leave, leave of absence, sick leave or unpaid vacation could be construed as NAAW.

Case in point: An employee took three unpaid months off to travel and passed away while abroad. His plan sponsor submitted a claim for life insurance, but the insurance company denied it because he was considered NAAW. The employee's spouse sued the plan sponsor for the lump sum and won.

Action: Many judges will side with widows over "negligent" employers. To lessen the financial risk, notify your broker/consultant and insurance company immediately, in writing, when you know an employee will be NAAW. Your broker/consultant will then request to extend benefits. The employee must receive communication in writing regarding any benefits that are not extended. If required, purchase—or have the employee purchase—additional life or travel insurance for the period that he or she will be NAAW.

Liability #2
Life insurance or LTD coverage refusals

Refusal of coverage by employees may lead to legal action against the plan sponsor if an uninsured employee dies.

Case in point: An employee refused life insurance and long-term disability (LTD), but there was nothing in writing to indicate this refusal or to show that the employee understood the importance of the decision. He died soon after. His spouse sued the employer after discovering that there was no life insurance coverage. The judge ruled that the plan was intended to provide coverage for all employees and that the plan sponsor ought to have acted responsibly by insisting that all employees participate.

Action: Make life insurance and LTD coverage a condition of employment, and make desired hires who refuse coverage sign a Refusal of Benefits form, which will assist you in court.

Liability #3
Late applicants

Insurance companies expect you to know the rules when administering a plan. If you enrol an employee after his or her eligible date and provide no health evidence, the insurance company may not provide immediate coverage but assume that you are aware of this.

Case in point: An employee submitted an enrollment form seven months after her eligibility date, but it was missing the health evidence form and was therefore returned. The employee resubmitted correctly, but she died while the application awaited approval. The insurer denied the claim for life insurance. The employee's spouse subsequently sued and won.

Action: Provide new hires who opt out of coverage with written notification that they might be declined coverage if they decide to opt in later. Ensure that all late applicants fill out the health evidence form. If the insurance company declines coverage, make sure the employee is notified in writing.

There are more plan liabilities that could lead to lawsuits. Attention to detail and proper documentation are critical in your interactions with plan members to avoid putting your company at risk.

Source: Benefits Canada 07-2011

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apply for the additional coverage, ensure they sign a statement to that effect and that it is retained for future reference.

Benefit Extension for Terminated Employees

More and more often, due to mergers, early retirement, and terminated employment, carriers are being asked by plan sponsors to provide benefit extensions beyond the employee's last day of work or to grant coverage beyond what the Employment Standard's Act calls for. To prevent difficulties with respect to getting a benefit extension contact the carrier or third party administrator in advance to see what they are able to provide. Please keep in mind the insurer has the final say as to whether or not the extension and the benefits being requested will be approved. That way you will know if the insurer has agreed to the extension before you actually commit to it. It is also a good idea to convey the decision in writing to the employee so they understand what is being agreed to.

Late Entrants

Plan administrators need to understand they are responsible for enrolling new employees onto the group life and health plan within 31 days of the expiration of the plan's waiting period. For most groups this is 90 days. Failure to enroll the employee within this time frame usually means the employee and their dependents are deemed to be 'late entrants', and subject to providing satisfactory medical evidence at their own expense. It may also mean having a restriction on the amount of dental coverage they may have during the first year they are on the plan and possibly having other benefits declined outright. The submission of medical evidence does not mean that everyone will be approved for coverage, and the consequences of a decline are that everyone is unhappy. It is the plan administrator's responsibility to ensure enrolment forms for new employees are submitted to the carrier. As a result, sending them immediately to the carrier upon hiring the employee makes sense. The carrier will pend the form until it's time to add the employee to the plan. If the employee doesn't work out it's just a matter of notifying the insurer of this in order to have them removed from the plan and to receive any refund of premium paid.

Until next time…