

TO: Deputy Secretaries for Administration

FROM: Christian L. Soura
Secretary of Administration 

DATE: November 2, 2010

RE: Change in Federal Law Regarding Retroactivity and Benefits

Earlier this year, President Obama signed new health care reform legislation that prohibits the retroactive termination of health benefits.

Timely processing of employee actions in SAP, including long-term leaves without pay, has always been critical, not only to ensure that records are correct but to avoid negative impacts on compensation, unnecessary costs for employer-sponsored benefits (such as health care), and effects on optional benefits (such as long-term disability). However, recent changes to federal law make it even more vital that agencies process actions timely to avoid incurring additional costs.

From January 1, 2010 to mid-September 2010, over 1,000 leave without pay actions were entered more than 30 days after the effective date, and over 300 of those were leave without pay without benefits actions. Historically, there have been no repercussions to the agency or the commonwealth when actions were entered late. That will no longer be the case starting next year.

To avoid additional costs to the commonwealth, Time Advisors, Workers' Compensation Coordinators, and SPF Absence Coordinators must remain diligent with their tasks to stop pay and benefits timely and must be held accountable for the timely processing of actions.

Effective January 1, 2011, the following procedures must be followed for all retroactive actions impacting the termination of health benefits, including leave without pay without benefits, suspensions, and separations:

1. Retroactive actions, including leaves and separations, that cause a termination of benefits cannot be processed more than 45 days after the effective date of the action.
2. For any action terminating benefits that would have been retroactively effective more than 45 days, the agency can no longer use a retroactive effective date. All such terminations must be done prospectively as follows:
 - a. In all such cases, the agency must provide the employee with a 30-day written notice that benefits will be terminated.

- b. The effective date of the action in SAP to terminate benefits must be 30 days after the date the letter is sent. The agency will be responsible for paying employer contributions for benefits that result from this extension of benefits.

The first attachment to this memorandum provides tips for avoiding retroactivity, examples of costs the agency will be responsible to pay when errors occur, and coding instructions when benefits cannot legally be ended retroactively. Please note that the costs to your agency could be significant if the new requirements are not met. The second attachment is a template letter to inform employees of benefits eligibility for retroactive actions.

By November 30, 2010, agencies must review all open leave without pay cases and set appropriate tasks to end benefits timely. In cases where the leave without pay with benefits entitlement already has expired, notify the employee immediately and update SAP. It is not necessary to give 30 days notice now, but it will be required for any actions entered on or after January 1, 2011.

To avoid the need for retroactive changes, agencies must be proactive in developing tracking systems to ensure that all leave without pay without benefit actions are processed within 45 days of the effective date. Because SAP does not prevent retroactive actions, the Office of Administration will be running reports to identify actions that cancel benefits more than 45 days retroactively. Agencies will be responsible for entering appropriate actions to reinstate benefits. Because the cancellation of benefits in these cases now is a violation of federal law, the employee processing the action may be subject to discipline, up to and including termination of employment.

Any questions regarding leave or Workers' Compensation should be directed to Sherri Keiter-Reed at 717.787.9872 or skeiterree@state.pa.us. Any questions regarding Health Care Reform and benefits should be directed to Tara Long at 717.787.9872 or talong@state.pa.us. Other questions can be sent to ra-benhelpp@state.pa.us or 717.787.9872.

Attachments

cc: Human Resource Directors
Time Advisors
Workers' Compensation Coordinators
SPF Absence Coordinators
Ralph Perez-Bravo, HRSC



[Date]

[Employee]
[Street Address]
[City, State, Zip]

Dear [Employee]:

You have been on a leave without pay with benefits since [date]. Your entitlement to receive benefits expired on [date]. Due to an administrative error [or retroactive termination as a result of xxx], the termination of your benefits was not completed timely.

Effective on [30 days from letter date], your benefits will be terminated. Your leave without pay without benefits remains approved through [date]. If you are enrolled in health benefits, you will receive information on how to continue your health benefits from the Pennsylvania Employees Benefit Trust Fund or you may call 1.800.522.7279 for more information.

Should you have any questions, please contact [Time Advisor, WC Coordinator or SPF Coordinator] at [phone].

Sincerely,

Tips for Avoiding Retroactivity

1. As soon as an absence is entered, and it is known that the absence will be long-term, immediately enter the corresponding long-term action. (Reminder: Long-term is defined as more than one full pay period, keeping in mind that if the absence spans part of one pay period and not the complete next period, it is still considered short-term.)
2. Set the following tasks in Microsoft Outlook (in SPF Tracking System for SPF Absence Coordinators) as a reminder of future actions needed:
 - a. Five days before the benefits entitlement expires, enter the action to begin leave without pay without benefits with the correct effective date to ensure it is not forgotten.
 - b. If it is unknown if the absence will be longer than one full pay period, set a task at 18 days to check the status of the employee returning to work.
3. Remind all supervisors of their responsibility to inform Human Resources as soon as possible of absences when an employee has no paid leave, especially for new employees who may not be eligible for SPF absences with benefits.
4. Use the reports in the error reporting system to determine if absences are not in sync with actions. Keep in mind that there are occasions when the absence and action are a day or two apart for benefits continuation reasons. However, the report will identify missing actions.
5. Run a report of all employees currently using leave without pay and ensure tasks are set up appropriately for the end date.
6. If a Time Advisor, Workers' Compensation Coordinator, or SPF Absence Coordinator leaves their position, have all set tasks transferred to a supervisor or the coordinator's replacement so that they are not lost. (Note: SPF Coordinators who use the Tracking System do not need to take action to transfer the tasks in that system.)

Examples of Retroactivity and Agency Responsibility

Example 1: Employee exhausts leave without pay with benefits entitlement on October 1, 2010. The agency identifies the error on December 1, 2010.

1. The agency sends a notice to the employee on December 1, 2010 notifying them that their benefits will be terminated December 31, 2010.
2. On December 1, the agency processes the leave without pay without benefits transaction effective December 31, 2010.
3. The result is that the employee's leave without pay with benefits entitlement is extended by 3 months (October 1 through December 31).
4. The agency will be responsible for the additional employer contributions for active and retiree health care.

Number of Pay Periods	Active Coverage (\$400 per pay)	Retiree Coverage (\$240 per pay)	Total
7	\$2,800.00	\$1,680	\$4,480

Example 2: Employee is placed on Military Leave Without Pay with Benefits effective July 1, 2007. On June 30, 2010 agency determines that military orders did not qualify for benefits. Employee received health benefits for three years in error.

1. The agency sends a notice to the employee on June 30, 2010 notifying them that their benefits will be terminated July 30, 2010.
2. On June 30, the agency processes the leave without pay without benefits transaction effective July 30, 2010.
3. The result is that the employee's leave without pay with benefits entitlement is extended by more than 3 years. (July 1, 2007 – July 30, 2010)
4. The agency will be responsible for the additional employer contributions for active and retiree health care.

Fiscal Year	Active Coverage	Retiree Coverage	Total
2007/2008	\$8,606.40	\$6,259.20	\$14,856.60
2008/2009	\$9,519.20	\$6,259.20	\$15,778.40
2009/2010	\$10,692.80	\$6,259.20	\$16,952.00
2010/2011	\$800.00	\$400.00	\$ 1,200.00
Total Agency Expense Incurred			\$48,787.00

Coding of Retroactive Actions Without Benefits

1. Create an approved regular leave without pay with benefits (AO) action effective the date after the benefits action should have ended. Note: If an absence is not approved, absence without leave (AW) may be used with benefits instead of AO.
 - a. Add text comments: "This AO action with benefits is entered to avoid retroactive termination of benefits in accordance with health care reform law."
 - b. Reminder: Long-term AO or AW with benefits is not authorized for any other reason; this is the only situation where an employee on long-term AO or AW retains benefits.
 - c. Actions requiring PARs: If a PAR is needed, indicate in the header that this is a priority request and attach the letter sent to the employee.
2. Only the action is changed. Do not change the absence type. (Example: Code MW is the appropriate code for military leave without pay without benefits; do not change the absence code to AO. Only the action will reflect AO.)
3. Immediately send the notification letter to the employee that benefits coverage will end in 30 days.
4. Create the appropriate leave without pay without benefits action effective in 30 days.