

# Employee's FMLA Claim Fails Due to Unpaid Health Plan Premiums

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*Kliskey v. Making Opportunity Count, Inc.*, 2025 WL 959257 (D. Mass. 2025)

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A former employee alleged that her employer violated the Family and Medical Leave Act (FMLA) by (among other things) terminating her health benefits while she was on leave. Although the employer disputed the allegation, contending that it had not cancelled the employee's coverage, the court held that this was not material since the employee's claim failed as a matter of law because she admittedly had failed to pay her share of the health plan premiums. The court explained that, under the employer's leave policy, which was consistent with the FMLA, the employee was responsible for continuing to pay her portion of premiums during the leave. Because the leave was unpaid, the court stated that the employee should have arranged to continue her contributions while she was away. Because she did not, the court concluded, the employer was entitled to terminate her coverage.

**EBIA Comment:** Employers covered by the FMLA (generally, private-sector employers with 50 or more employees and public agencies and local educational agencies with any number of employees) must maintain coverage under a group health plan during an employee's FMLA leave at the same level and under the same conditions as if the employee had been continuously employed for the duration of the leave. This means that employers must pay the same share of health coverage premiums for an employee on FMLA leave as it would have paid if the employee had not been on leave. However, an employer's obligation to maintain coverage (and pay its share of the premium) ends if an employee chooses to drop coverage during the leave, fails to pay the employee's share of the premium by the applicable deadline, fails to return to work at the end of the leave, or informs the employer of an intent to not return. Although this court did not address it, an employer that wishes to terminate coverage because of missed premium payments must provide advance written notice to the employee at least 15 days before coverage is to cease. For more information, see EBIA's Group Health Plan Mandates manual at Sections XVII.C ("FMLA: Maintenance of Group Health Plan Benefits") and XVII.D ("Paying for Coverage During FMLA Leave"). See also EBIA's Self-Insured Health Plans manual at Section XIV.H.1 ("FMLA: Family and Medical Leave").

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