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Continuation Of Civilian Health Insurance Coverage During Military Service

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Q: I have been mobilized and deployed to Iraq. My husband and two small children (one of whom has significant health problems) have stayed behind at our home in a small town far from any military health facility. My husband and I want to continue utilizing (for him and for the children) the excellent civilian health insurance coverage that I have through my civilian job at the XYZ Corporation. When I was mobilized, I listened carefully to the brief about the Uniformed Services Employment and Reemployment Rights Act (USERRA) offered by a representative of the National Committee for Employer Support of the Guard and Reserve (ESGR).

The ESGR briefer said that I can elect continued health insurance coverage through my civilian job and that the employer is permitted to charge me only the regular employee cost for my first 30 days on active duty. I contacted my employer's personnel director and told her that I want this continued coverage and that for the first 30 days I should only have to pay the regular employee cost, which is \$50 per month.

The employer's personnel director said that USERRA permits me to continue my civilian health insurance coverage for up to 24 months, if I am on active duty for that long, but that to do so I must pay \$612 per month. That is for the total monthly premium, including the part the employer normally pays, plus a 2 percent administrative fee for the employer. I have already taken a big pay cut, because my Army pay is only about two-thirds of my XYZ Corporation salary, and the company is not making up the difference. I cannot afford to pay that kind of money for health insurance. The military health-care system is not convenient, because my husband and children are far from a military medical treatment facility and have never utilized the military system before, but I guess they will have to make do.

I would like my husband and children to have the regular civilian coverage for the first 30 days, while they transition into the military system. I can certainly afford to pay the normal \$50 per month for that first month. The XYZ Corporation personnel director told me that the ESGR briefer was wrong—that because my active duty is scheduled to last more than 30 days I must pay 102 percent of the entire premium from day one of my active duty period. Who is right?

A: In this case, the personnel director is correct. The relevant subsection of USERRA is as follows: "A person who elects to continue health-plan coverage under this paragraph may be required to pay not more than 102 percent of the full premium under the plan

(determined in the same manner as the applicable premium under section 4980B(f)(4) of the Internal Revenue Code of 1986) associated with such coverage for the employer's other employees, except that in the case of a person who performs service in the uniformed services for less than 31 days, such person may not be required to pay more than the employee share, if any, for such coverage." [38 U.S.C. 4317(a)(2) (emphasis supplied).]

If you are on a period of service of fewer than 31 days (like a two-week annual training tour, for example), the employer is permitted to charge you only the employee share, if any, of the cost of the coverage. Because your period of service, as called for in your orders, is for more than 30 days, the employer is permitted to charge you the full premium, plus the 2 percent administrative fee, from day one of your active duty period.

USERRA's legislative history explains the intent of Congress concerning this section: "Section 4315(c)(1) [later renumbered to 4317(a)] would provide that an employee on military leave shall, at his or her request, be covered by [health] insurance provided by the employer for up to 18 months [recently amended to extend the period to 24 months]. This protection is similar to the continuation of health insurance under the so-called COBRA provisions of the Employee Retirement Income Security Act, 29 U.S.C. 1161, et seq., but applies to all individuals entering the uniformed services, without limiting qualifications such as the size of the workforce of the person's employer. The individual employee may be required to pay the entire cost of continuing insurance coverage under section 4315(c)(1) [now 4317(a)], except in the case of persons serving periods of training or service for 30 or fewer days. In the case of these short tours, the employer is required to continue the insurance coverage, and the individual employee may only be required to pay the employee share, if any. Dependents of Reserve Component members are entitled to participate in the military health-care system, including CHAMPUS [now called TRICARE], only when the member has been called to serve for at least 31 days. The Committee [House Committee on Veterans' Affairs] section 4315(c)(1) [now 4317(a)] to ensure that there be no gap in health insurance coverage of the reservist's family while the reservist is performing military training." House Report No. 103-65, 1994 United States Code Congressional & Administrative News 2449, 2467.

The distinction that must be made is not between the first 30 days and thereafter. Rather, the distinction is between a period of service of less than 31 days and a period of service of 31 days or more. I am including this article in this column because it has come to my attention that there is a lot of misunderstanding of this issue among Reserve Component members.

Please note that section 4317(a) permits the employer to charge up to 102 percent of the entire premium, if the period of service is at least 31 days. The employer is permitted to charge any lesser amount or nothing at all. Many employers are going

“above and beyond” the requirements of USERRA by continuing the health insurance coverage for the families of employees who have been called to the colors, and not charging for this benefit. ESGR honors those employers who do more than the law requires.

For further information about section 4317 of USERRA (health insurance coverage), I invite the reader's attention to Law Reviews 10, 69, 85, 118, and 142.

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