

GROUP LOCKHART INC.



World Class Employee Benefit Services

### Legislative Update- Temporary Lay-off versus IDEL Legislative leaves

Group Lockhart has been active with Group Life and Health Insurers since the state of emergency was declared to maintain benefits coverage during extended lay offs caused by Covid 19 Pandemic. Insuring provisions require employee eligibility based on being “actively at work” and performing minimum required hours on a regular basis. The exceptions to these Insuring provisions are extensions during a temporary lay-off, extensions during a legislated leave, during a disability, and required statutory notice periods upon termination.

Insurers provided various forms of Covid relief, eliminating minimum hours during the lock down, extended payment terms of 60 days , and premium credits of 50% for dental and 10% health while dentists and paramedical services were unavailable for April, May and June based on reduced claims experience.

Employment benefits are a key component in extending the employment deal as recognized in the employment standards legislation. All insurers in March were treating these as “temporary layoffs” starting March 17<sup>th</sup> as last day worked and allowed coverage to continue up to 120 days or 180 days maximum duration. These temporary lay off contract wordings do not align with Employment Standards Act (ESA) wording. For example, no Insurer has a temporary lay off provision that would extend benefits for a 35-week period mentioned in the ESA. If this extension period was provided to laid off employees, it extends the “termination clock” from 13 weeks to 35 weeks, allowing a much longer re-call period before termination is triggered defined in the ESA. Employment lawyers have confirmed this legal strategy.

The passing of the Ontario IDEL legislation on May 29<sup>th</sup> changed this coverage extension period from a temporary lay off contract provision to their legislated leave provision. All Insurers covered the IDEL period as a legislated leave just like maternity leaves. However, they created a pandemic benefit coverage cliff with benefits ending either September 4<sup>th</sup>, the end of the IDEL period, or Sept 17<sup>th</sup>, a 180-day period from the last day worked. In short, they were not recognizing the “stop the clock” principle in the legislation for the temporary lay-off.

The ESA indicates employers can temporarily lay off employees for periods effective September 4, 2020 and the period is defined by the ESA rules. **Sept. 4, 2020 is considered the date of temp layoff** as the COVID-19 Period did not count towards the ESA rules on temporary lay-offs (due to Reg. 228/20).

This was a collision course between Group Life and Health contract law and the employment deal defined in the ESA. We pushed several carriers to recognize this regulation as the new date of lay-off and stack their temporary lay-off extension on top of the IDEL extension period to allow a longer period for business recovery and to retain a highly skilled workforce. Many carriers confirmed this date.

We also elevated the contractual issue to the Chairman of the Canadian Life and Health Insurance Association for review so that CLHIA Insurers could be consistent in their lay-off provisions to align with the amended ESA.

In support of the hospitality industry Group Lockhart provided advice regarding changes to the Employment Standards Act to the Ministry of Labour. The press release from Minister Monte McNaughton issued September 3<sup>rd</sup> was welcome news before the Labour day weekend.

- The legislated leave has been extended - During the COVID-19 period (March 1, 2020 to January 2, 2021)
- **The ESA's regular rules around temporary layoff resume. For practical purposes, an employee's temporary layoff clock resets on January 3, 2021.**

Group Life and health Insurers are updating their bulletins accordingly. The extended Covid-19 Period will be covered by all Insurers, however stacking a temporary leave provision on top of the January 3<sup>rd</sup> date remains an important question for some carriers. Many are taking a case by case approach and approving further extensions based on MOAs or "memorandums of agreement" which are outside their normal contractual provisions and require lists of all employees on a temporary lay-off.

The Canadian Life and Health Insurance Association issued this press release dated September 24<sup>th</sup> confirming support to Canadians through the Pandemic.



The **Canadian Life and Health Insurance Association** (v) has released a statement saying industry-wide data collected over the past six months shows that most who had prescription drug benefit coverage through their health plans in March, continue to be covered.



The statement which follows the [publication of the CLHIA Canadian Life & Health Insurance Facts report](#), says data shows that 98.5 per cent of the 27-million clients who had coverage through their health benefits plans in March still have coverage today.



"Since the beginning of the COVID-19 health crisis, life and health insurers have been closely monitoring the number of Canadians covered by workplace health benefits, including prescription drug coverage. These workplace plans have shown remarkable resilience through this unprecedented pandemic," says **Stephen Frank**, CLHIA president and CEO.

"Canada's life and health insurers have been working to help employees maintain these benefits by proactively providing premium reductions and other forms of premium deferrals to help reduce costs. Insurers have also been working with health professionals to provide access to virtual care services, including mental health supports covered by their workplace plans."