



## Trends

# DEVIL IN THE DETAILS

Small technicalities in your benefits plan could lead to big lawsuits

BY Yafa Sakkejha

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

### Liability #1: NAAW employees

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 protect 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.

These are many 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. 

### Fact File

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#### EDUCATION

Queen’s University

#### PAST EMPLOYERS

Warrillow & Co.

Stonebrooke Asset Management

#### EXTRA-CURRICULAR

Founder of the House of Verona, a health retreat in Collingwood, Ont.