

**INFINISOURCE**  
BENEFIT SERVICES

# COBRA Compliance Webinar and Update

for



Presented by Dan Taylor, Vice President Sales

- Reagan era law nearly 30 years old
- Employer law, not insurance law
- 20 or more employees
- Guarantees rights to continuation of coverage
- Notice requirements
- Employers still struggle to comply
- Continues to evolve
- ACA did not eliminate or change COBRA but certainly affects it
- Enforcement activity is increasing

IRS excise tax  
ERISA fines  
DOL audits  
Ex-employee claims  
Damages  
Attorney fees

KEEP the IRS out of your business

KEEP your business out of court

# Who Must Comply?



**NOT REQUIRED**  
Church Plans

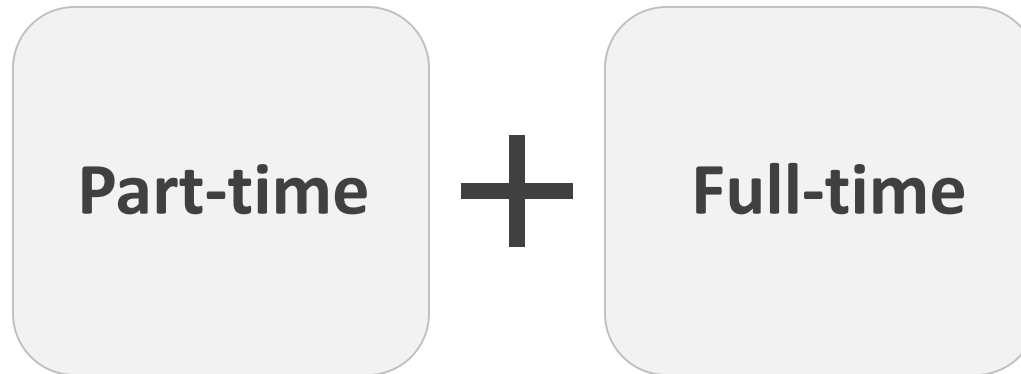


**NOT REQUIRED**  
Federal government



**REQUIRED**  
Employers with 20  
or more employees

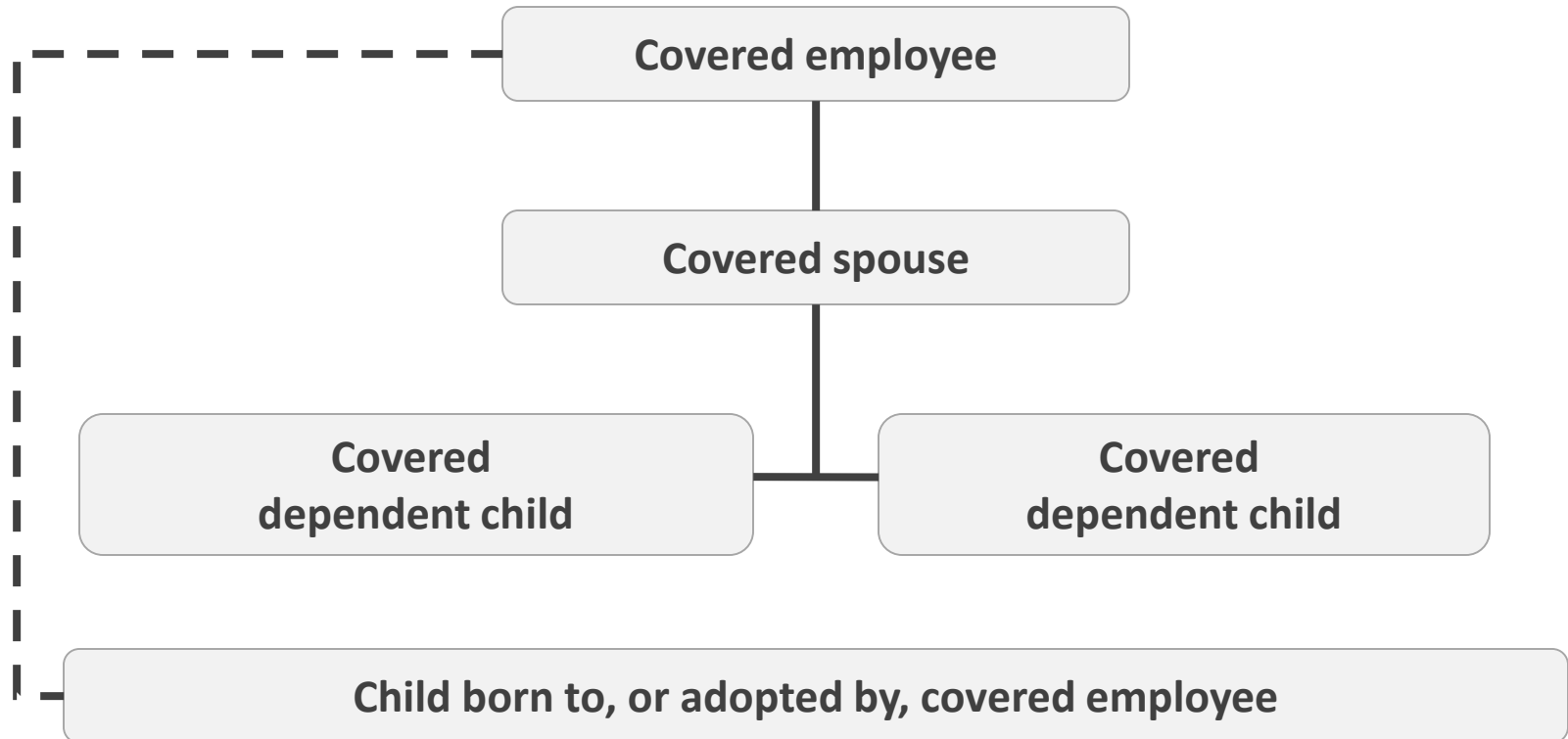
**When counting employees,  
employers MUST include:**



**Regardless of their eligibility for the  
group health plan**

# Qualified Beneficiaries





# Qualifying Events & Coverage Periods

**EVENT**  
**+**  
**LOSS OF COVERAGE**  
**=**  
**COBRA QUALIFYING EVENT**

- Voluntary termination
- Involuntary termination  
(gross misconduct exception)
- Reduction of hours
  - (strike, layoff, leave of absence, loss of full-time status under ACA)

- Applies to involuntary termination only
- No clear federal definition (IRS 2004)
- Decided in court on a case-by-case basis

## Supporting Case Law

### Employer's favor

Burke v. American Stores

Avina v. Texas Pig Stands

Adkins v. United International

Karby v. Standard Products Co.

Mlsna v. Unitel

Johnson v. Shawmut National

### Employee's favor

Paris v. Korbel & Brothers

Conery v. Bath Associates

Cabral v. Olsten Corp.

Dole v. Dayton Hudson Corp.

Nero v. University Hospitals

Management Services Organization

- FMLA leave is not a COBRA qualifying event
- Group health plan coverage continues as if employee was not on FMLA leave
- Group health plan coverage may be terminated for failure to pay (at least 30-day grace period)

#### **If employee returns**

- Entitled to job reinstatement
- Entitled to group health plan reinstatement (regardless if COBRA was maintained during FMLA leave)

#### **Employee does not return**

- COBRA qualifying event is last day of FMLA leave
- Qualified Beneficiaries entitled to COBRA coverage (regardless if COBRA was maintained during FMLA leave)

- Death of the employee
- Medicare entitlement
- Divorce or legal separation
- Dependent child ceasing to be a dependent

## **Employee or other Qualified Beneficiary**

must inform the employer of:

- Divorce or legal separation
- Dependent child ceasing to be a dependent
- Social Security disability
- Secondary events



- Loss of coverage date is date of removal from plan
- COBRA begins on event date (e.g., date of divorce)
- Premium due from event date
- Coverage not required during gap

# COBRA Extensions

Months

36

30

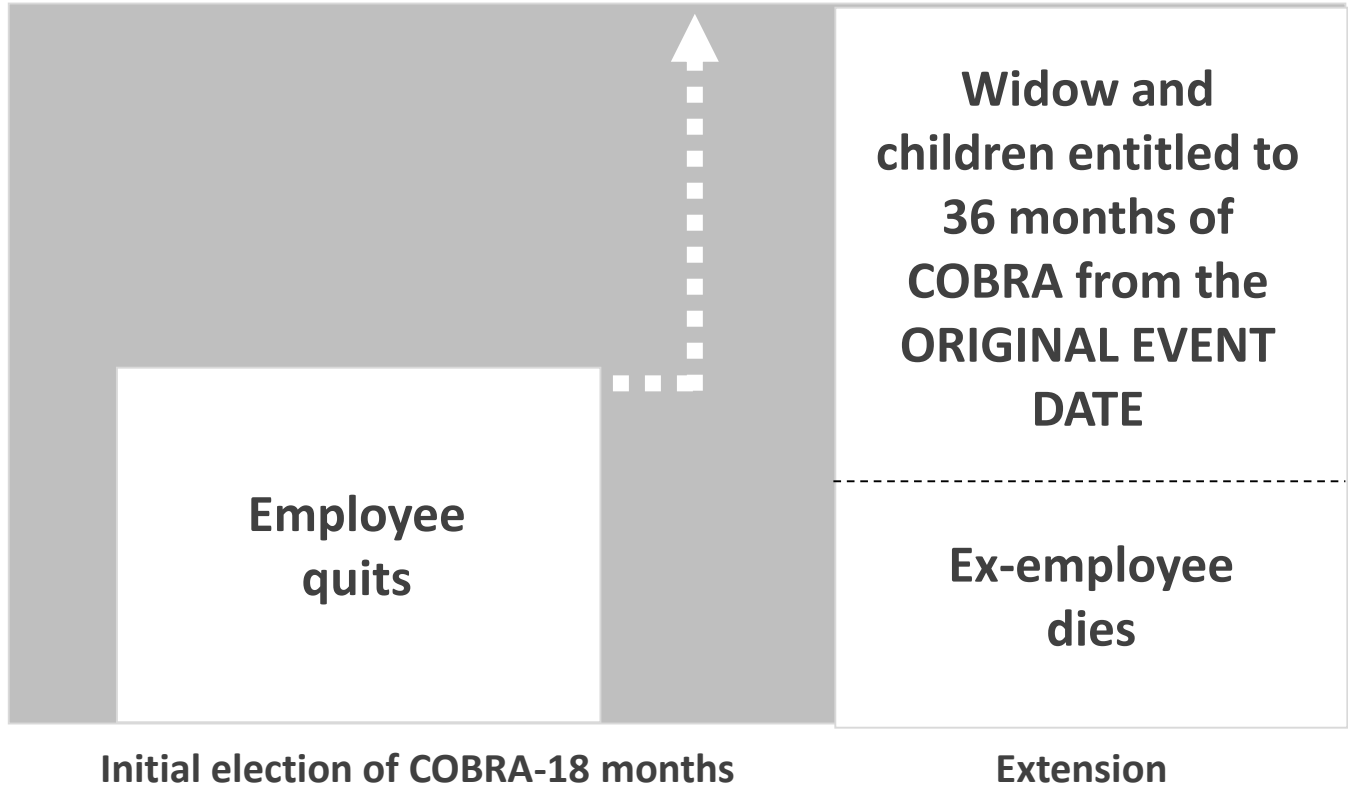
24

18

12

6

0



## Disabled Qualified Beneficiary entitled to 29 months of COBRA



# COBRA Coverage

**COBRA applies to**

Medical  
Dental  
Vision  
Prescription  
Certain EAPs  
Certain wellness programs  
Certain voluntary plans

**COBRA does not  
apply to**

Life insurance  
Disability  
HSAs  
Long-term care plans

- FSAs are generally offered under COBRA
- COBRA is offered if the maximum benefit for the remainder of the plan year equals or exceeds the premium
- The Qualified Beneficiary will pay their monthly contribution post-tax instead of pre-tax
- If account balance is zero, COBRA would not have to be offered

- Carryover is a plan option and applies to all participants, including COBRA Qualified Beneficiaries
- This notice does not change the COBRA rule that applicable HIPAA-excepted Health FSAs may be terminated at the end of the plan year in which the qualifying event occurs



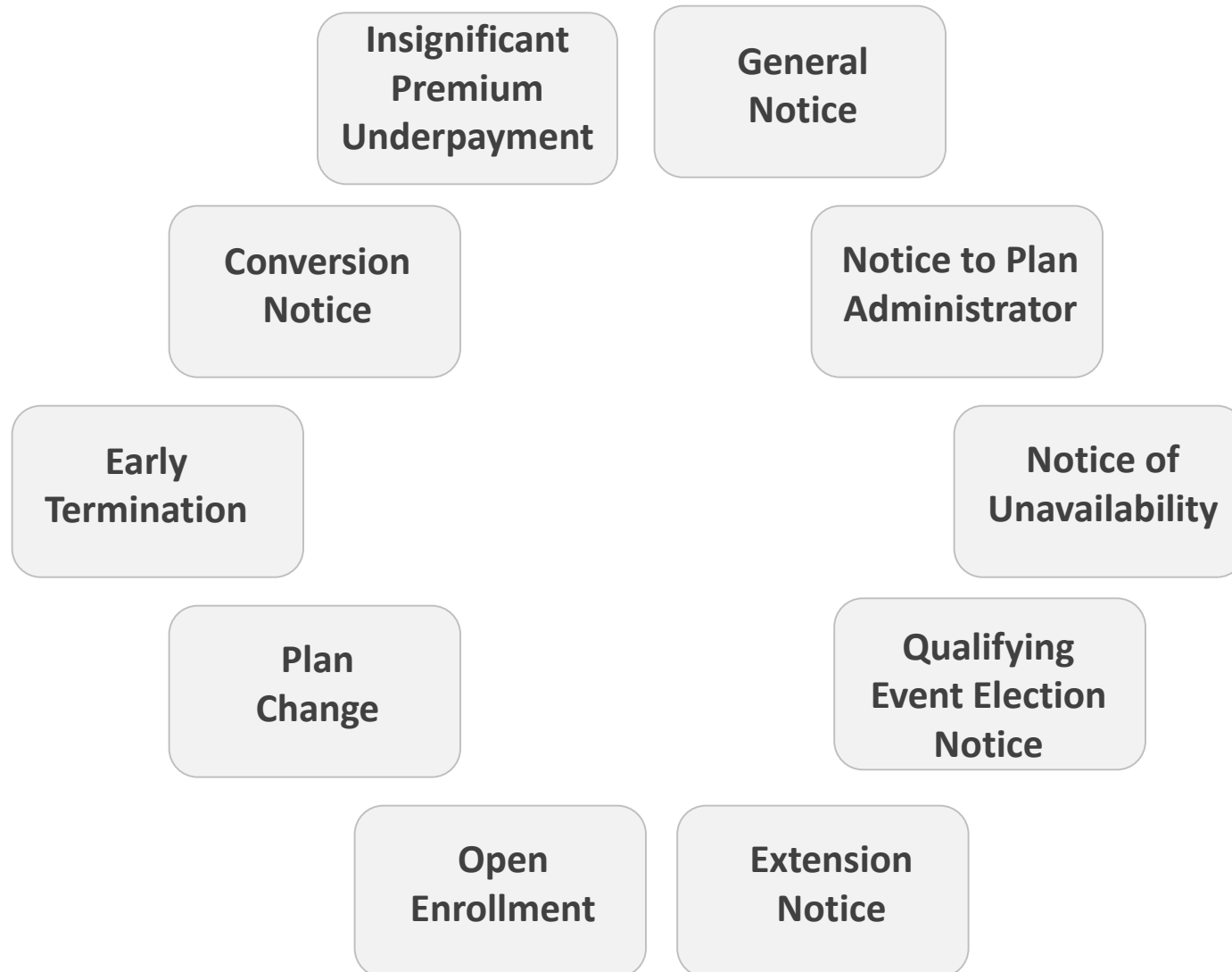
- Qualified Beneficiaries may continue the level of coverage in effect immediately preceding the qualifying event
- Employer must continue the maximum reimbursement available immediately preceding the qualifying event
- New benefit must be offered for next plan year if during COBRA coverage

- **HRA is a self-insured plan**
  - Use actuarially determined method, for example:
    - Anticipated claims exposure
    - Estimated risk
    - Estimated administrative costs
  - Or, use prior costs adjusted for CPI
- **Additional requirements**
  - Charge all COBRA participants the same applicable premium for the HRA regardless of account balance
  - The premium is not calculated by how much is left in the HRA
  - *NOTE: New Qualified Small Employer HRAs are not considered health plans and therefore not subject to COBRA*

## Alternative coverage

- Alternative coverage does not equal COBRA - offer COBRA
- Spouse or dependent lose alternative coverage - offer COBRA

# Notices



- To acquaint employees, spouses and dependents with COBRA
- Sent when plan first begins complying with COBRA
- Also sent to new enrollee and spouse
- Sent by first class mail to BOTH enrollee AND spouse
- 90-day time frame
- *Best practice:* include QB Notice

## Events:

- Divorce or legal separation
- Dependent child ceasing to be a dependent
- Secondary event
- Disabled

### **Within 60 days from the later of:**

- The qualifying event date
- The loss of coverage date
- The date the QB is notified of their rights and responsibilities

- If QB notifies the employer/plan administrator of one of these events:
  - Divorce or legal separation
  - Dependent child ceasing to be a dependent
  - Secondary events
  - Social Security disability
- Then, if the individual is deemed not eligible for COBRA coverage, the plan administrator must:
  - Send the Notice of Unavailability within 14 days (ER/PA) of being notified of the event, and
  - Must provide an explanation of why coverage was unavailable



- To inform Qualified Beneficiaries of their right to elect COBRA
- Sent with PROPER language, generally within 44 days (ER/PA)
- Sent by first class mail to employee and spouse (*documentation of mailing recommended*)

- To Qualified Beneficiaries extending their COBRA coverage
  1. Standard secondary event
  2. Special Medicare entitlement
  3. Social Security disability
- Sent when the employer or plan administrator is informed of a COBRA extension

- Sent to all COBRA Continuees
- Sent BEFORE the open enrollment period begins
- Lists the date of the open enrollment period, available options and rates for each option

- Sent to all COBRA Continuees
- To inform Continuees of a plan change (benefits, rates, etc.)
- Sent within 60 days after the change has been adopted by the plan

- If an individual is terminated from COBRA prior to the end of the 18, 29 or 36 month period:
  - A notice must be sent explaining why the coverage was terminated, and
  - Rights to any other coverage they might have

- To notify COBRA Continuees of their right to elect a conversion option (*if available under the plan*)
- Sent within 180 days prior to COBRA expiration
- Sent by first class mail to ALL Continuees

- Employer accepts premium
  - What is insignificant?
- Provides Underpayment Notice
  - When is underpayment due?
  - How much is underpayment?
- 30-day grace period from date notice is provided



## COBRA Notice

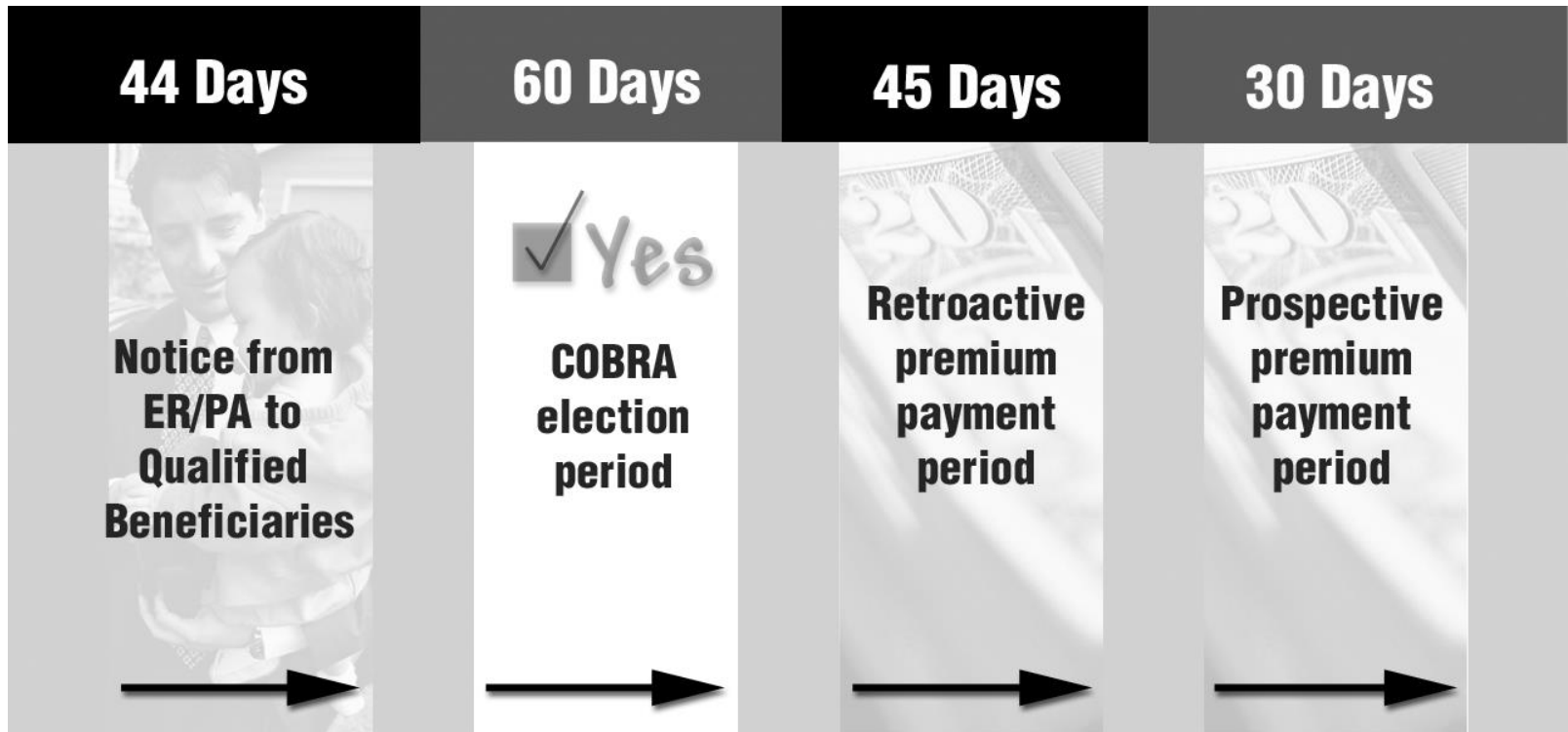
**ABC Corporation  
5738 S. Main Street  
Anytown, USA 68798**

**John Q. Beneficiary and  
Spouse/Dependents (if any)  
123 First Street  
Anytown, USA 67890**

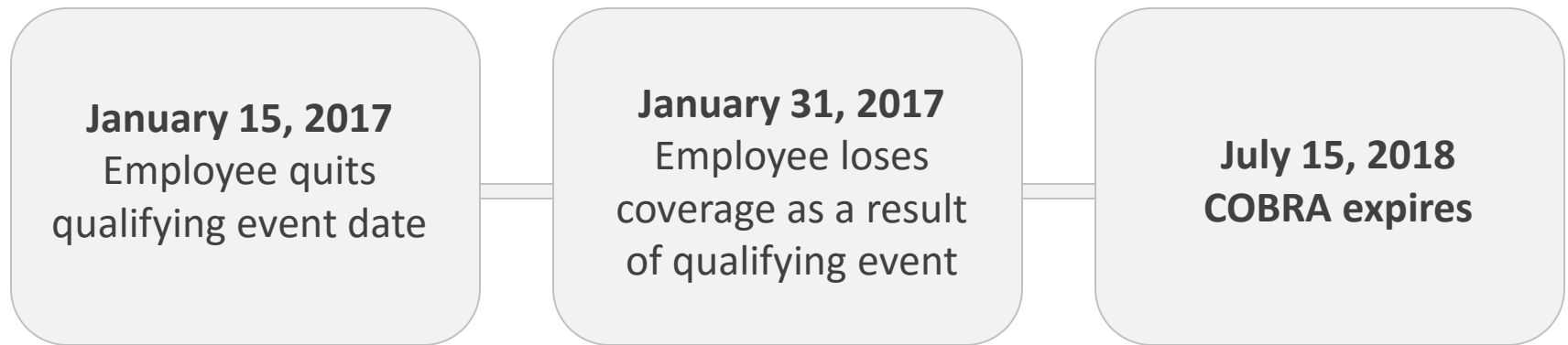




# Election Periods & Time Frames



Qualified Beneficiaries entitled to  
18 months of COBRA coverage  
from the date the employee quits



Qualified Beneficiaries entitled to  
18 months of COBRA coverage  
from the loss of coverage date



# COBRA Ending Events

## **At the end of 18 months**

- Voluntary termination
- Involuntary termination
- Reduction of hours

## At the end of 29 months

- Social Security disability determination
  - Voluntary termination
  - Involuntary termination
  - Reduction of hours

## At the end of 36 months

- Employee death
- Divorce or legal separation
- Dependent ceasing to be a dependent
- Medicare entitlement



**For failure to make  
timely payment\***

*\*Insignificant premium payment*

**When covered by another  
group health plan after  
COBRA is elected**

**When becomes entitled to  
Medicare after the date  
COBRA is elected**

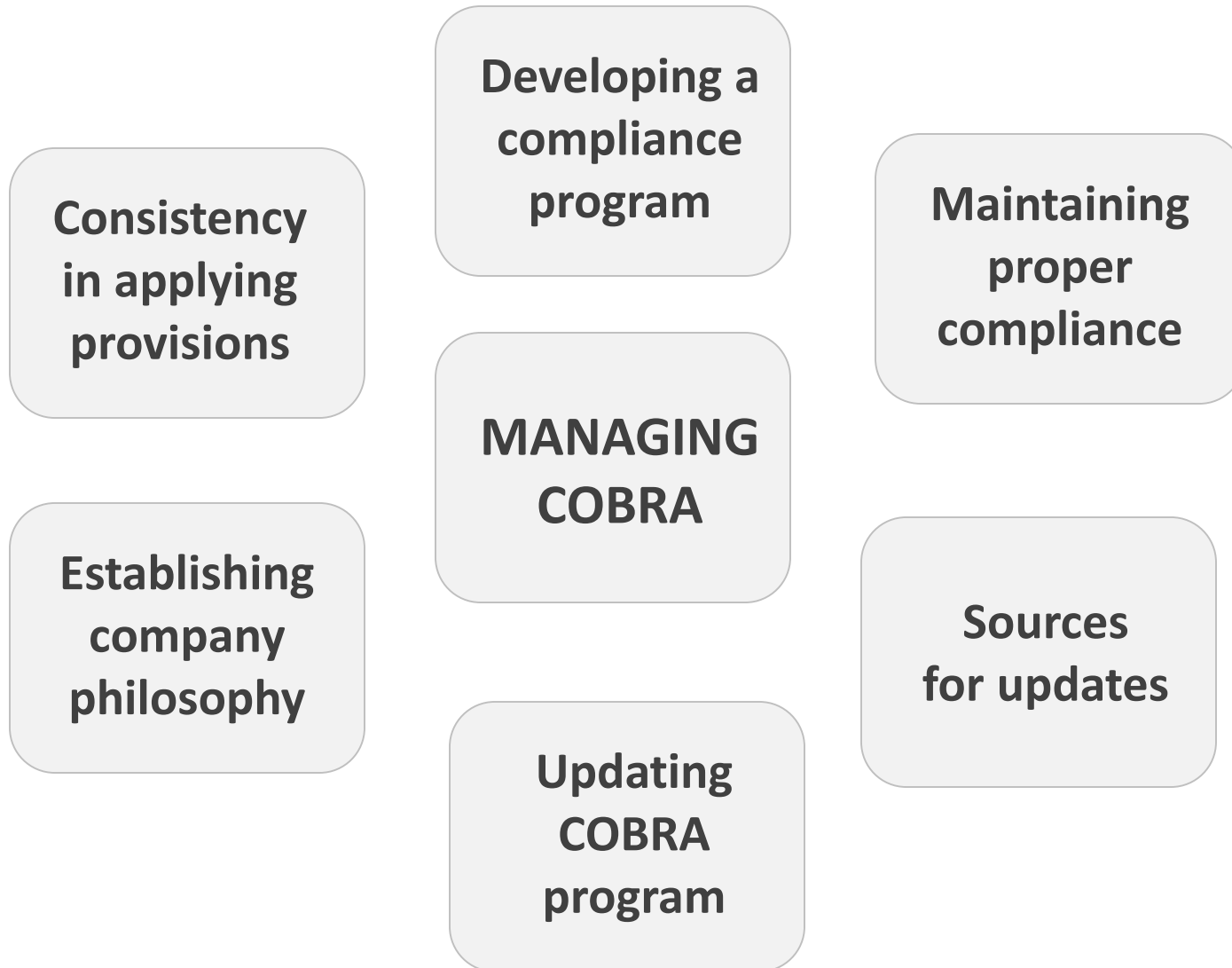
**Cancellation of  
ALL  
group health plans**

**First of month 30 days  
AFTER  
being deemed no  
longer disabled**

**Applies within the 11-month extension ONLY**

**FOR CAUSE**

# Managing COBRA





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