COBRA Compliance Webinar and Update

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?
Who Must Comply

NOT REQUIRED
Church Plans

NOT REQUIRED
Federal government

REQUIRED
Employers with 20 or more employees
When counting employees, employers MUST include:

Part-time + Full-time

Regardless of their eligibility for the group health plan
Qualified Beneficiaries
Qualified Beneficiaries

- Covered employee
  - Covered spouse
    - Covered dependent child
    - Covered dependent child
  - Child born to, or adopted by, covered employee
Qualifying Events & Coverage Periods
EVENT + LOSS OF COVERAGE = COBRA QUALIFYING EVENT
18-month Qualifying Events

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

• 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)
36-month Qualifying Events

- 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
Standard Secondary Event

Months

36
30
24
18
12
6
0

Initial election of COBRA-18 months

Employee quits

Widow and children entitled to 36 months of COBRA from the ORIGINAL EVENT DATE

Ex-employee dies

Extension

Copyright 2015
Disabled Qualified Beneficiary entitled to 29 months of COBRA

- Qualifying event and disabled: January 15, 2017
- COBRA terminates: June 15, 2019
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 in the mail...

NOT in the exit interview

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
<table>
<thead>
<tr>
<th>Time Frames</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td><strong>44 Days</strong></td>
<td>Notice from ER/PA to Qualified Beneficiaries</td>
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<tr>
<td><strong>60 Days</strong></td>
<td>Yes COBRA election period</td>
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<tr>
<td><strong>45 Days</strong></td>
<td>Retroactive premium payment period</td>
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<tr>
<td><strong>30 Days</strong></td>
<td>Prospective premium payment period</td>
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Qualified Beneficiaries entitled to 18 months of COBRA coverage from the date the employee quits

- **January 15, 2017**: Employee quits qualifying event date
- **January 31, 2017**: Employee loses coverage as a result of qualifying event
- **July 15, 2018**: COBRA expires
Qualified Beneficiaries entitled to 18 months of COBRA coverage from the loss of coverage date

- **January 15, 2017**
  Employee quits

- **January 31, 2017**
  Qualifying event date and loss of coverage date

- **July 31, 2018**
  COBRA expires
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
Increasing Premiums at other times

Consistency in applying provisions

Establishing company philosophy

Developing a compliance program

Maintaining proper compliance

MANAGING COBRA

Sources for updates

Updating COBRA program
Contact Dan Taylor at dtaylor@infinisource.com