

COBRA – Avoiding Common Mistakes

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- Session phone number: (877) 668-4493
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A black and white photograph of a modern office interior with large windows. In the foreground, two men are looking at a laptop. In the background, two women are looking at a document, and another woman is standing to the right. The scene is brightly lit, suggesting a sunny day. A green decorative shape is in the top right corner.

COBRA – Avoiding Common Mistakes

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Presented by: Erica Storm, Esq. and
Erin Margerie, Esq.

Introduction

Today's Presenters

Erica Storm, Esq.

- *Employment and benefits attorney*
- *Expertise in Affordable Care Act and other health plan compliance issues*
- *Educates companies on compliance obligations*

Erin Margerie, Esq.

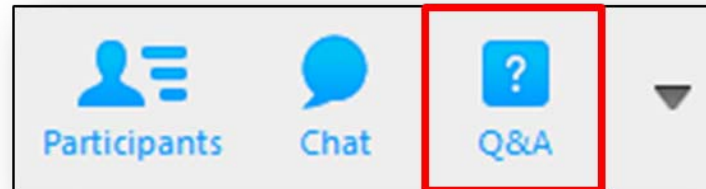
- *Employment and benefits attorney*
- *Primary focus: employee benefit compliance and health plan issues*
- *Creates educational materials and compliance resources*

Webinar Logistics

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We welcome your
questions at any time!
Questions will be
addressed at the end
of the session.



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Panelists" to submit
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Agenda

- COBRA Overview
- Common COBRA Mistakes
- Questions & Answers

COBRA Overview

The Law

- Consolidated Omnibus Budget Reconciliation Act
- COBRA coverage
 - Temporary continuation of health coverage
 - Self-pay basis
 - Coverage loss due to a specific qualifying event
- Many states have own continuation laws for insured health plans



Consequences of COBRA Mistakes

- IRS excise taxes
- ERISA - \$110/day statutory penalties
- Participant lawsuits to compel coverage (plus attorneys' fees)
- Adverse selection
- Inability to terminate coverage



Mistake – Assuming COBRA Does Not Apply to You

When Does COBRA Apply to You?

COBRA applies to group health plans maintained by employers with **20 or more employees**

Small Employer Exception

- Small employers (fewer than 20 employees) are exempt, although may be subject to state continuation laws
- Employer must have had fewer than 20 employees on at least 50% of typical business days in the previous calendar year
 - Calculation applies to entire current calendar year
 - Does not change if the number of employees goes up or down in current year

When Does COBRA Apply to You?

Employees that must be counted



All common law employees, not just plan participants

Full-time and part-time employees (although part-time employees count as a fraction of full-time employees)

Employees of companies under common control

When Does COBRA Apply to You?

Health plans maintained by **churches** are exempt from COBRA

Qualifying for church exemption:

- Health plan must be maintained by a church (or a convention or association of churches) that meets certain tax requirements
- Often involves a detailed analysis of organization's activities and religious affiliation
- Under some circumstances, organizations that are not churches (for example, certain hospitals or schools) may qualify for exemption

**Mistake – Assuming COBRA
Does Not Apply to Your Plan**

When Does COBRA Apply to Your Plan?

- COBRA applies to **group health plans** maintained by employers
- **Key question** – Does the plan provide **medical care**?

Health Plans Subject to COBRA

- Medical plans (both fully and self-insured)
- Dental plans
- Vision plans
- Prescription drug plans
- Health reimbursement arrangements (HRAs)
- Health flexible spending accounts (FSAs)
- Wellness programs that provide medical care
- Employee assistance plans (EAPs) that provide medical care

When Does COBRA Apply to Your Plan?

Employee benefits NOT subject to COBRA:

- Health savings accounts (HSAs)
- Long-term care plans
- AD&D or group life insurance plans
- Long-term and short-term disability plans
- EAPs and wellness plans that do not provide medical care

Cancelling a plan does not always end COBRA responsibility. If the employer continues to provide any group health plan, the obligation to provide COBRA coverage continues.

Mistake – Not Knowing Your Qualified Beneficiaries

Who Is a Qualified Beneficiary?

- Qualifying events (QEs) trigger COBRA coverage for qualified beneficiaries (QBs)
- Potential pitfalls:
 - Not offering COBRA to a QB
 - Offering COBRA to a non-QB



Who Is a Qualified Beneficiary?

An individual covered by a group health plan on the day before the QE

- Covered employee
- Employee's spouse
 - Includes same-sex spouses, but does not include domestic partners
- Covered employee's dependent children
- Any child born to or placed for adoption with covered employee during COBRA coverage

Mistake – Not Knowing Your Qualifying Events

What Is a Qualifying Event?

COBRA must be offered to QBs when:



A QE occurs when the health plan is subject to COBRA and



The QE causes a **loss of coverage** under the plan for a covered employee, covered spouse or covered dependent child

What Is a Qualifying Event?

QEs for Employees

- Termination of employment (for reasons other than gross misconduct)
- Reduction in hours of employment

QEs for Spouses

- QEs for employees (termination of employment and reduction in hours)
- Divorce or legal separation from the covered employee
- Death of covered employee
- Covered employee's entitlement to Medicare

QEs for Dependent Children

- QEs listed for spouses
- Loss of dependent status under plan rules

Qualifying Event Issues

Not all coverage losses will be caused by QE

- Voluntary termination of coverage
- Termination or amendment of plan
- Special rule for voluntary termination in advance of QE

Not all COBRA events will cause a loss of coverage

- Legal separation
- Medicare entitlement

Employers need to pay attention to plan terms for eligibility

Mistake – Bad Timing

How Long Should COBRA Last?



- Maximum coverage period
 - 18 months for termination of employment and reduction in hours
 - 36 months for all other QEs
- Can be extended in some specific circumstances
- Can be terminated early for certain reasons

Extending COBRA Coverage

Disability
Extension

- 18-month maximum coverage period extends to 29 months for all related QBs

Second QE

- 18-month maximum coverage period extends to 36 months for spouse and children when second QE occurs during initial 18-month period

Medicare
entitlement

- Maximum coverage period extended for spouse and children when covered employee has termination/reduction in hours within 18 months of becoming entitled to Medicare

New York: plans subject to COBRA must offer an additional 18 months of coverage when first 18-month maximum coverage period is exhausted

Terminating COBRA Coverage

- COBRA coverage generally terminates at end of maximum coverage period
 - No notice to QB is required
- Notice is required to QBs when COBRA terminates early

COBRA may terminate early if:

- QB fails to make timely premium payments
- Employer ceases to make any group health plan available to any employee
- QB becomes covered under another group health plan after COBRA election
- QB becomes entitled to Medicare after COBRA election
- Disabled QB is determined not to be disabled
- For cause

Mistake – Not Giving Enough Information

What Information Must Be Provided?

- Plan administrators must provide certain information to plan participants and QBs
- Not providing timely and proper notices puts plan at risk
- Avoid problems by establishing procedures for notices



COBRA Notices – Overview

COBRA Notice	Description
General (or initial) notice	General description of COBRA rights under the plan.
Election notice	Describes right to COBRA coverage and how to make an election.
Notice of unavailability of COBRA coverage	Must be provided after a group health plan denies a request for COBRA coverage (or a request for an extension).
Notice of early termination of COBRA coverage	When a group health plan decides to terminate continuation coverage early, the plan must give the qualified beneficiary a notice of early termination.

COBRA Notices – General Notice

General Notice

- Provides information to plan participants regarding COBRA and plan procedures
- Must be provided within 90 days after plan coverage begins
- May be provided in summary plan description (SPD)
- Single notice can be used for employee/spouse at same address
- Model notice is available

COBRA Notices – Employer's Notice of QE

- Employer must notify plan administrator within **30 days** after the later of the QE or loss of coverage
- Must include enough information to identify plan, employee, QE and date
- Notice is not required when employer is plan administrator

Notice must be provided upon:

- ✓ Employee's death
- ✓ Employee's termination of employment/reduction in hours
- ✓ Employee's Medicare entitlement

COBRA Notices – Election Notice

- Gives QBs information about rights and obligations regarding a specific QE
- Must be provided within **14 days** after plan administrator is notified of QE
- If employer is also plan administrator, notice must be provided within 44 days of QE or coverage loss (whichever is later)
- Model notice is available



COBRA Notices – Notice of Unavailability

- Plan administrator must notify individual with explanation of why he or she is not entitled to COBRA coverage
 - No QE has occurred
 - QB did not give the required notice
 - QB did not provide complete information
- Deadline is same for sending election notice
- Generally must give notice within **14 days** after notice of QE

COBRA Notices – Notice of Early Termination

Plan administrator must notify QBs when COBRA terminates before end of maximum coverage period

Timing

- Notice must be provided as soon as possible

Required information

- Reason for early termination
- Date coverage terminated or will terminate
- Available conversion rights

Mistake – Not Following Procedures

What COBRA Procedures Should Employers Have?

- Plans must establish reasonable COBRA procedures

Notice
procedures

Election
procedures

Payment
procedures

- Risk of liability for plan and employer:
 - Failing to establish reasonable COBRA procedures
 - Having procedures but not following them

Notice Procedures

- Specify the person designated to receive notices and how notice is to be given
 - May require use of a specific form
 - Must allow covered employee, QB or representative to provide notice
- Describe information required for notices
- Identify deadlines for providing notices
- Provide for proper handling of incomplete notices

Election Procedures

QBs must be given at least **60 days** to elect
COBRA

- Election period begins on date election notice is provided or, if later, date coverage would be lost
- Each QB has independent election rights
- Covered employee or spouse can elect on behalf of all other QBs and parent/guardian can elect for minor child
- If QB waives coverage, he or she can revoke waiver before the end of the COBRA election period

Mistake – Charging Too Much or Too Little

How Much Should COBRA Cost?

- COBRA coverage does not have to be offered for free to QBs
 - Employers may require QBs to pay for COBRA
 - Employers may choose to provide coverage at a discount or no cost



How Much Should COBRA Cost?

Maximum premium

- Maximum premium cannot exceed **102%** of cost to plan for similarly situated participants

Disability Extension

- QBs receiving the disability extension may be charged up to **150%** of the plan's total cost of coverage

Premium Increases

- COBRA premiums may increase if plan cost increases, but must be fixed in advance of each 12-month premium cycle

Payment Procedures

Deadlines

- QBs must pay COBRA premiums on a timely basis
- Must provide at least **45 days** for initial payment
- Must provide a minimum **30-day** grace period for other payments

Administration

- Late payments
 - Permitted to terminate coverage after end of grace period
 - Notice of early termination
- Special rules for premium shortfalls

Mistake – No Documentation

Recordkeeping



- Maintaining thorough and adequate records can help –
 - Streamline COBRA administration
 - Support the plan in the event of claim
- Keep records of:
 - COBRA notices sent and received
 - COBRA premium payments received
 - Premium deadlines

Questions?



Thank you!

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