
COBRA

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As Turns Twenty, Venomous As Ever for Employers

The health benefit continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (the “COBRA law”) went into effect on July 1, 1986. After twenty years, COBRA is an increasingly complicated law, with heavy administrative requirements for employers and a venomous bite in the form of penalties and lawsuits.

COBRA provides that if you were covered by a group health plan offered by an employer who has 20 employees or more, or if you’re covered by a group health plan offered by a labor union (a “Taft-Hartley plan”) and you lose coverage because of termination of employment, retirement or a reduction of hours, you and your covered dependents may continue to participate in the group health plan for up to 18 months after loss of coverage as long as you pay the monthly plan premium. If you are a dependent on a group health plan and you lose coverage because the employee dies or becomes entitled to Medicare, you divorce, or you’re a child and become too old to stay on your parent’s plan, you may continue to be covered for up to 36 months after loss of coverage, as long as you continue to pay the premium.

COBRA has been a huge benefit for those who have been able to continue their coverage. Prior to the enactment of COBRA, if workers lost their job or family members were no longer able to be classified as dependents of an employee, they lost their group health insurance and could not continue it. With COBRA, those concerns no longer loom as large – the ability to continue coverage is there if it is needed.

Employers have never liked COBRA because it costs them money. Most people who don’t believe their



medical costs will be as much as each month's premium choose not to enroll in COBRA coverage. So those who do continue with their group health insurance by paying a premium of, for example, \$300 per month but file claims each month averaging \$1,000 in medical expenses, cost the former employer \$700 per month or \$8,400 per year, either in direct payments or in additional insurance premiums in future years. Multiply that by hundreds or thousands of people in large companies and the costs of COBRA begin to add up.

Another reason employers don't like COBRA is the administrative burden and expense placed on them. Prescribed notices and letters must be sent to employees at specific times telling them about COBRA rights, mailed to the employee's home and addressed to all covered family members. Other notices must be sent within 14 days of a loss of coverage, describing exactly what coverage may be continued and the costs and options. Then there are enrollment periods to track and premiums to bill, collect and pass on to insurance carriers or administrators, reports to create, all of which cost the employer time and money.

The real bite of COBRA for the employer are the penalties and costs of lawsuits that can result from poor administration or non-compliance with the law! If employers don't perform COBRA administration tasks correctly or in a timely manner, they can be fined and penalized up to \$115 per day per COBRA beneficiary. The enforcement agencies for COBRA are the Internal Revenue Service and the U.S. Department of Labor, two agencies no employer enjoys seeing walk in their door.

But the fines are insignificant compared to the costs of COBRA lawsuits that employers may have to pay. The fact that the COBRA law exists paves the way for individuals who believe they should have been offered benefits continuation to sue their former employer/group health plan sponsor if they were not offered those benefits. All COBRA lawsuits are filed in Federal court, and employers have to be able to demonstrate that they have complied with COBRA correctly in order to successfully defend themselves. Employers who lose those lawsuits frequently find themselves paying their own legal fees, the legal fees incurred by the ex-employee or dependent, and the medical expenses those individuals incurred which were not covered by group health insurance.

What can employers do to contain their COBRA costs and exposure? Several avenues are available. The most popular is to "outsource" COBRA administration to an insurance carrier or broker, or to find a Third Party Administrator (a TPA) to perform the required administrative tasks. Those organizations will generally charge a moderate fee for their services, and while they won't assume all the COBRA liabilities on behalf of the employer, at least the employer will know that someone knowledgeable is making sure their COBRA administration is being done correctly and completely.

Another method is to perform COBRA administration inside the employer's own offices. Typically this is done in large employers with staff members who know the laws, regulations and procedures involved with employee benefits. These organizations will normally utilize computer

software, either installed on their computers or via the Internet, to help them produce the voluminous letters required by COBRA, track the enrollment periods, bill the premiums, post premiums received and report to insurance carriers on COBRA activity.

The group of employers who frequently fail to perform COBRA administration adequately are small employers, those with 20-300 employees. This size of employer may use an insurance carrier or broker who does not offer COBRA administration services, and the employer may not know where to find a TPA willing to perform COBRA duties for them. Or the employer may not know what COBRA requires of them and may simply not be meeting the administrative requirements of the law.

Not doing COBRA can be extremely risky for small employers, as the costs of penalties and lawsuits may represent a larger share of their net worth than for a larger enterprise. Fortunately, recent advancements in technology making COBRA administration software available for nominal fees on the Internet allow small employers access to the same high level of COBRA software that has been available to large employers and to TPAs for many years.

Whatever their size, employers would do well to perform a periodic "COBRA Administration Check-Up" to ensure their practices are designed to keep them out of trouble, and to look into improving their COBRA administration if they are exposed to some of the venom of the Federal COBRA law.

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