

# Costly COBRA Mistakes and How to Avoid Them

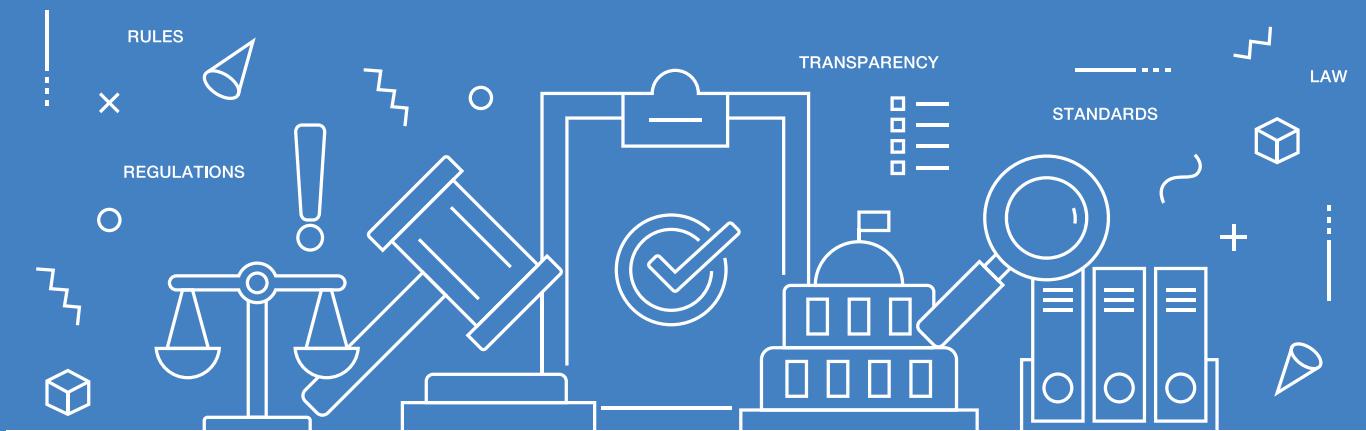
The Consolidated Omnibus Budget Reconciliation Act of 1986, commonly known as COBRA, provides for continuation of existing group health plan coverage for qualifying employees, covered spouses, and covered dependents. Employers who must comply with this law meet the following qualifications: they employ 20 or more employees on at least 50% of the typical workweek days. Part time employees are counted and if employee counts drop below 20 participants, the current employees still qualify due to the grandfather clause.

**Consequences can be costly.** For employers who do not comply, the IRS can issue an excise tax of \$200 per day with statutory penalties reaching upwards of \$110 per day. Qualified beneficiaries can sue to recover COBRA coverage and courts can impose additional “equitable relief” among attorney fees if plaintiff is successful in court.

## Costly Mistake 1: Assuming COBRA Doesn't Apply to All Group Health Plans

Plans and programs subject to COBRA include Medical, Prescription Drug, Dental, Vision, Substance Abuse, Mental Health, Disease Management Programs, HRAs, Health FSAs, and Employee Assistance Programs. By assuming COBRA doesn't apply to all group health plans, employers often fall subject to fines. How to avoid this mistake can be resolved simply by reviewing Employee Assistance Programs, On-site Clinics, and Wellness Programs. Remember that a health FSA under a cafeteria plan is subject to COBRA and do not assume HIPAA excepted benefits are also excepted from COBRA.

# COMPLIANCE



**Costly Mistake 2: Failing to Recognize that a Leave of Absence Could be a Qualifying Event**

Qualifying events include Termination of Employment, Reduction in Hours, Divorce or Legal Separation, Death of Covered Employee, Dependent Child Ceasing to be a Dependent under the plan, Entitlement to Medicare, Bankruptcy (retirees only). All events must cause a loss of coverage. Modification or termination of plans, chapter 11 bankruptcy for a non-retiree, and employees failure to pay required premiums are all non-qualifying events. Termination of FMLA leave is a qualifying event if employee does not return to work. If non-FMLA leave is a reduction in hours and results in loss of coverage, then it is a qualifying event. What to do? Offer COBRA coverage to employees on FMLA leave only if employee does not return from FMLA leave and have this clearly stated in the policy.

#### **Costly Mistake 3: Failing to Provide COBRA Election Notice**

A COBRA Election Notice must be provided to each effected qualified beneficiary, i.e. employee, covered dependents, and covered spouses. To avoid this mistake, routinely run audits of employee data, communicate employee data to your COBRA third party administrator, and always provide a notice!

#### **Costly Mistake 4: Incorrectly Handling COBRA Premiums**

Monthly COBRA payments must be allowed, and if a Qualified Beneficiary is incompetent, payment deadline must be extended. Plans may pend claims until the election and payment are received. To make sure this mistake is avoided, ensure procedures are in place to administer the grace period, establish procedures and framework to determine if there is an “insignificant” shortfall. Be mindful, you can’t cancel coverage for non-payment, if shortfall is “insignificant”. The best thing to do again would be to put notification procedures in place to alert the qualified beneficiary to the shortfall.

#### **Costly Mistake 5: Failing to Address ACA Issues**

Check COBRA language in plan documents and SPDs if using the ACA look-back measurement method to determine the plan eligibility. Amend the plan if necessary, and work with a payroll provider or benefits consultant to ensure COBRA coverage is properly reported on Form 1095-C.

# COMPLIANCE

