



**BOOT
CAMP**



Glenda L. Hodge

Compliance Consultant

Employee Benefits Corporation

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Tax Reform and Tax Advantaged Benefits

After months of debate on tax reform, Congress passed the "Tax Cuts and Jobs Act" (H.R. 1) to overhaul the tax code. Items of interest for tax advantaged benefits include the dependent care flexible spending account, adoption assistance, education assistance programs, transportation plans, and the individual mandate under the ACA.

With implementation starting in January, the impact of "Tax Cuts and Jobs Act" would be felt all throughout early 2018. Tax reform legislation removes the ACA's individual mandate requirement for months beginning after 12/31/18 and onward. [Read more >](#)

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COBRA Part I: Offering COBRA Coverage

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Today's Agenda:

- **Introduction to COBRA Continuation Coverage**
- **Employers and Plans Subject to COBRA**
- **COBRA Initial Notice**
- **Triggering a COBRA Obligation**
- **Notification of Qualifying Event**
- **COBRA Election Notice**
- **Notice of Unavailability of COBRA Coverage**
- **What Happens Next? Preview of Part II**

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**Introduction to COBRA Continuation
Coverage**

Introduction to COBRA Continuation Coverage

- **COBRA = Consolidated Omnibus Budget Reconciliation Act** passed in 1985.
- **Requires**
 - Group Health Plan Sponsors (Employers) to
 - **Provide continuation of health plan coverage when certain events occur and for specific periods of time at individual's expense**
 - Specific notification procedures and timelines
- **State continuation laws apply to insurance companies and will not be addressed during this Boot Camp**

Introduction to COBRA Continuation Coverage

- **Guidance is from the IRS, DOL, and ERISA regulations**
- **Stiff penalties for non-compliance**
 - Failure to provide required notices: \$147 per day per violation
 - Private lawsuits from individuals or 3rd parties (providers)
 - Employers may end up self-funding otherwise insured claims
- **Develop internal practices guided by an ERISA attorney**

Introduction to COBRA Continuation Coverage

- **Employee Benefits Corporation**
 - Can answer COBRA questions
 - Cannot provide legal advice
 - Offer COBRA administration services: COBRASecureSM



Employers and Plans Subject to COBRA

Employers and Plans Subject to COBRA

- **Employers with 20 or more employees in prior calendar year**
 - How many employees
 - **Related entities are grouped (“Controlled Group”)**
 - **Part-time employees are counted fractionally**
 - Governing law differs
 - **Private employers covered under ERISA (DOL and IRS regulations)**
 - Church-controlled employers are exempt
 - **State and local government employers under the Public Health Services Act (PHSA)**
 - Federal government employers are exempt

Employers and Plans Subject to COBRA

- **“Group Health Plan”**
 - Plan providing medical care and maintained by Employer
 - Examples:
 - **Medical**
 - **Dental**
 - **Vision**
 - **Drug treatment programs**
 - **Health Care Flexible Spending Accounts (FSAs)**
 - **Health Reimbursement Arrangements (HRAs)**
 - **Critical illness**
 - **Group cancer or**
 - **Group Accident policies**

Employers and Plans Subject to COBRA

- **Not Group Health Plans:**

- Examples:

- Life Insurance
- Health Savings Accounts (HSAs)
- Disability Insurance
- Dependent Care Assistance Plans (Dependent Care FSAs)

- **Sometimes Group Health Plans**

- Examples:

- Employee Assistance Plans (EAP)
- Wellness Programs

Employers and Plans Subject to COBRA

- **Sometimes Group Health Plans**

- Are “medical benefits” provided

- **Medical benefits**

- Physical exams
- Flu shots
- Blood pressure screens
- Counseling
- Discounted medical services
- On-site clinics

Employers and Plans Subject to COBRA

- **Health Care FSAs**
 - Limited COBRA obligation applies if:
 - **Employee is eligible for employer’s group medical plan; and,**
 - **Health Care FSA funded solely with employee pre-tax deductions; or**
 - Employer contribution to Health Care FSA is less than \$500; or
 - If employer contributes more than \$500, employee matches or exceeds that contribution with own pre-tax election deductions

Employers and Plans Subject to COBRA

- **Health Care FSAs**
 - Limited COBRA obligation:
 - **Employer contributions are technically employee contribution if:**
 - Employee can take the credits as cash
 - **Employer contributions if:**
 - Employee cannot take the credits as cash
 - Employee must direct them into Health Care FSA, other account or forfeit employer money

Employers and Plans Subject to COBRA

- **Health Care FSAs**
 - Limited COBRA obligation:
 - **COBRA does not need to be offered if account is not overspent**
 - Remaining balance in the account is equal to or less than the COBRA premium to continue through the rest of the year
 - **COBRA only offered through end of the Health Care FSA plan year**

Employers and Plans Subject to COBRA

- **Health Care FSAs – Example**
 - ABC Company offers Health Care FSA to
 - **Employees eligible for its major medical plan**
 - **Funded solely by employee salary reduction amounts**
 - **Jay had a \$600 annual election**
 - **On his qualifying event date he has made \$400 in deductions**
 - **On his qualifying event date he had \$150 in paid claims**
 - **He would pay a remaining \$204 in premium**
 - **He would have access to a \$450 balance**
 - **Jay should be offered COBRA (not overspent \$450 > \$204)**

Employers and Plans Subject to COBRA

- **Health Care FSAs – Example**

- ABC Company offers Health Care FSA to

- Employees eligible for its major medical plan
- Funded solely by employee salary reduction amounts
- Jay had a \$600 annual election
- On his qualifying event date he has made \$400 in deductions
- On his qualifying event date he had \$500 in paid claims
- He would pay a remaining \$204 in premium
- He would have access to a \$100 balance
- **Jay should NOT be offered COBRA (overspent \$100 < \$204)**



COBRA Initial Notice

COBRA Initial Notice

- **Plan Administrator (usually the Employer) is responsible to provide**
- **Plan first subject to COBRA: sent to all covered within 90 days**
- **Newly covered employee, spouse and/or dependent:**
 - 90 days after the date individual first became covered, or
 - By the date an election notice would be required
 - Applies even if employee received notice and spouse and/or dependent is newly covered

COBRA Initial Notice

- **Notices should be mailed separately to employee and spouse, or spouse should be identified separately in the address heading (e.g. Jay and Judy Smith & Dependents)**
 - Spouse or dependent living at a different address must be sent a separate notice to the address where he or she resides
 - If included in SPD, must meet SPD requirements, and COBRA delivery requirements
- **First class mail with Certificate of Mailing is recommended**



Triggering a COBRA Obligation

Triggering a COBRA Obligation

- **COBRA Qualifying Event:**
 - Must be listed under COBRA regulations
 - Must cause loss of coverage
 - Loss must occur within the COBRA maximum coverage period (usually 18 months)
- **COBRA starts**
 - The day after the Qualifying Event or
 - When loss is postponed, often the day after loss

Triggering a COBRA Obligation

- **Qualifying Events:**
 - For Employees, an Employee’s Spouse, and any Dependents:
 - **Voluntary Termination of Employment**
 - **Involuntary Termination of Employment (except for gross misconduct)**
 - **Employee’s Reduction of Hours**

Triggering a COBRA Obligation

- **Qualifying Events:**
 - For Spouses and Dependents only:
 - **Employee’s Entitlement to Medicare***
 - **Divorce or Legal Separation***
 - **Dependent Child ceases to be a dependent under the Plan**
 - **Employee’s Death**

*Event must cause a loss of coverage to be a Qualifying Event

Triggering a COBRA Obligation

- **Who has COBRA rights?**
 - Qualified Beneficiaries (QB)
 - Employee, spouse or dependent child of an employee covered under a Group Health Plan on the day before a Qualifying Event*
 - Any child born to or adopted by a covered employee during a period of COBRA continuation coverage
- **QB has rights to coverage the QB had the day before the Qualifying Event**

*FMLA and “in anticipation” lapses are exceptions

Triggering a COBRA Obligation

- **COBRA Rights:**
 - QBs must be allowed to add new family members in the same manner as active employees (e.g. HIPAA Special Enrollment)
 - **Newly added members are not considered “QBs” unless newborn, newly adopted child, or spouse dropped in anticipation of divorce**
 - Open enrollment rights apply to QBs in the same manner as active employees
 - **Add spouse and/or dependent**
 - **Changing coverage options**
 - **Add another COBRA eligible plan**



Notification of Qualifying Event

Notification of Qualifying Event

- **If Plan Administrator is not the Employer, Employer must:**
 - Notify Plan Administrator of:
 - **Termination/Reduction of Hours**
 - **Death of Employee**
 - **Employee Entitlement to Medicare**
 - **Employer Bankruptcy**
 - Provide notification:
 - **Within 30 days of Qualifying Event, or**
 - **Within 30 days of loss of coverage if COBRA begins then**

Notification of Qualifying Event

- **Plan can require employee or QB to:**
 - Notify Plan Administrator of:
 - **Divorce/Legal Separation**
 - **Loss of Dependent Child Status**
 - **Disability Determination**
 - Provide notification:
 - **Within 60 days of Qualifying Event, or**
 - **Within 60 days of being informed of responsibility to provide notice**

*Plan should not require notice from QB and should accept notice from others



COBRA Election Notice

COBRA Election Notice

- **If the Employer is Plan Administrator:**
 - Election notice must be postmarked within 44 days from:
 - Termination/Reduction of Hours
 - Death of Employee
 - Employee Entitlement to Medicare
 - Employer Bankruptcy

COBRA Election Notice

- **If the Employer is Plan Administrator:**
 - Election notice must be postmarked within 14 days from notification of:
 - Divorce/Legal Separation
 - Loss of Dependent Child Status
 - Disability Determination
- **If the Employer is not the Plan Administrator:**
 - Election notice must be postmarked within 14 days from notification of any event

COBRA Election Notice

- **Tracking**
 - First class mail with Certificate of Mailing is recommended
 - Keep a copy of what was sent!
 - Giving any QB an election form in person is not recommended
 - Use uniform procedures for every individual and every Qualifying Event to avoid trouble



Notice of Unavailability of COBRA Coverage

Notice of Unavailability of COBRA Coverage

- If COBRA is not available but is requested, Employer may need to provide a “Notice of Unavailability of COBRA Coverage”
- Provide notification within 14 days of receipt of:
 - Notice of Qualifying Event
 - Notice of Second Qualifying Event
 - Notice of Disability Determination
- Include
 - Why COBRA is unavailable (especially for gross misconduct)
- Provide to person expecting to receive COBRA coverage



Preview of Part II: Maintaining COBRA Coverage

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In Part II, We Will Cover:

- How to calculate the COBRA premium
- What qualified beneficiaries must do to elect and pay for COBRA coverage
- How long an individual can stay on COBRA coverage, and how coverage can be extended or terminated early
- What notices an employer must provide to its employees throughout the coverage period

Questions?

Thank you for attending!

Any questions can also be addressed by e-mail or phone:

Compliance Department

(800) 346 -2126

compliance@ebcflex.com

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