

# So, you think you have COBRA handled?

So did National Distributing Company, et al., Ward International Trucks, et al., Pan American Life Insurance Co., et al., and the Texas Municipal Group Benefits Risk Pool.

And it cost them . . . a combined total of over \$2 million.

These companies and hundreds like them all across the country know first-hand the power of COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985). Briefly, COBRA requires an employer to offer continued health benefits to former employees. It is potent and, when improperly administered, it can cost you millions. Are you prepared to take this risk?

## Cobra Enforcement and Penalties

Some managers view COBRA merely as an inconvenience and feel they can perform COBRA functions in-house without much training or support. The truth is, the federal government vigorously applies the law and prosecutes violations, not to mention the risk of individual lawsuits by former employees and their families that could cost millions of dollars.

With what areas of COBRA fines and penalties are you familiar?

Employers paying millions of dollars in claims/damages/attorney fees from lawsuits

ERISA fines (up to \$100 per day per beneficiary per violation

Dept. of Labor lawsuits

IRS Excise Tax Fines (\$100/\$200 per day)

Whether you have two events, ten events or 10,000 events a year, it takes just one to get you into trouble.

## COBRA Compliance Review

Cobra Qualifying Events. COBRA requires an employer offer to provide continuation coverage to employees, spouses and dependents when they might otherwise lose coverage for eight specific "qualifying events." When do you offer COBRA, and for how long?

Voluntary or involuntary termination (18 months)

Reduction of hours (18 months)

Divorce/legal separation (36 months)

Death of employee (36 months)

Dependent ceasing to be a dependent (36 months)

Employee's Medicare entitlement (36 months)

Employer's bankruptcy (Lifetime)

Disability determination (29 months)

Election Period and Time Frame. Accurately tracking COBRA time frames

avoids penalties and reduces employer insurance premium costs. What documentation could you produce to indicate tracking these required COBRA dates?

Qualifying event date (actual or loss of coverage date)

30 days notice to plan administrator

14 days notice to Qualified Beneficiary (ies)

60 days election period (from the later of ... date of notice or loss of coverage)

45 days retroactive premium payment period (initial payment grace period of 45 days from the election date)

30 days prospective premium payment period (monthly grace period measured from due date or plan terms)

COBRA continuation coverage (18, 29 or 36 months)

Terminations. Prompt termination of COBRA when certain events occur reduces employer's exposure for ineligible claims and avoids dangerous precedents. When do you terminate COBRA coverage?

Maximum coverage period reached

Failure to make timely payment (either 45 or 30-day grace period)

Coverage under another group health plan that does not contain any limitations or exclusions with regards to pre-existing conditions

Medicare entitlement

Deemed no longer disabled by Social Security

## COBRA Compliance Checklist to determine if you would survive an IRS audit

The items which follow must be integrated into any proper COBRA compliance program. Certain items are required by law. All items may be reviewed by either a judge in a lawsuit or an IRS auditor to determine if the employer complied properly. Could you produce. . .

Documentation of TAMRA (Technical and Miscellaneous Revenue Act) Criteria

Proof of COBRA training

## Written COBRA procedures (manual with instructions)

Documentation of program design (1986 or 1987) and program updates (to present)

Documentation of program monitoring

Notifications

Initial notification (overall mailing

required in 1986-87, remailed in 1990)

## Initial notification (to all new insurance enrollees)

Qualifying event notification

Stacked event notification

Disability extension notification

Conversion notification (required if your group health plan has a conversion option)

Premium billing notifications (optional, not a requirement)

Forms to document events reported to the employer (or plan administrator) for divorce/dependent events and disabilities

Open enrollment notice

Expiration notice (not a requirement, if event notice is properly worded)

## Documentation Systems

Documentation of:

Each notice sent;

COBRA dates (12 dates possible per beneficiary);

Notification language updates (1986-present);

Procedural updates (1986-present)

Any COBRA compliance program utilized by employers should include all of the above compliance items in order to reduce liability exposure. If you have missed only one of these items in handling your COBRA administration, you may want to attend the NJMTA educational workshop in East Brunswick on Thursday, February 23.

Employers with 2-19 employees should also be aware that the New Jersey 1992 Small Employer Health Benefits Act requires employees be offered continued coverage, at the employee's expense, under an employer-sponsored plan. This provision covers two "qualifying" events: 1) Employees whose work hours are reduced to less than 30 hours subsequent to the effective date of coverage for that employee. 2) Termination of employment. Employees must submit a written request for continued coverage within 30 days of termination or the effective date of the decrease in work hours. Contact your insurance benefits advisor for a copy of 94-01A of the Small Employer Health Benefits Program. NJMTA members may call Benefit Solutions for a copy of advisory bulletin.

*This article is presented as a courtesy to NJMTA members by Gary V. Cupo CLU, ChFC, president of Benefit Solutions. Cupo is benefit consultant to New Jersey Motor Truck Association Insurance Trust. He may be reached at 201-305-0050.*