



# Advanced COBRA Regulations

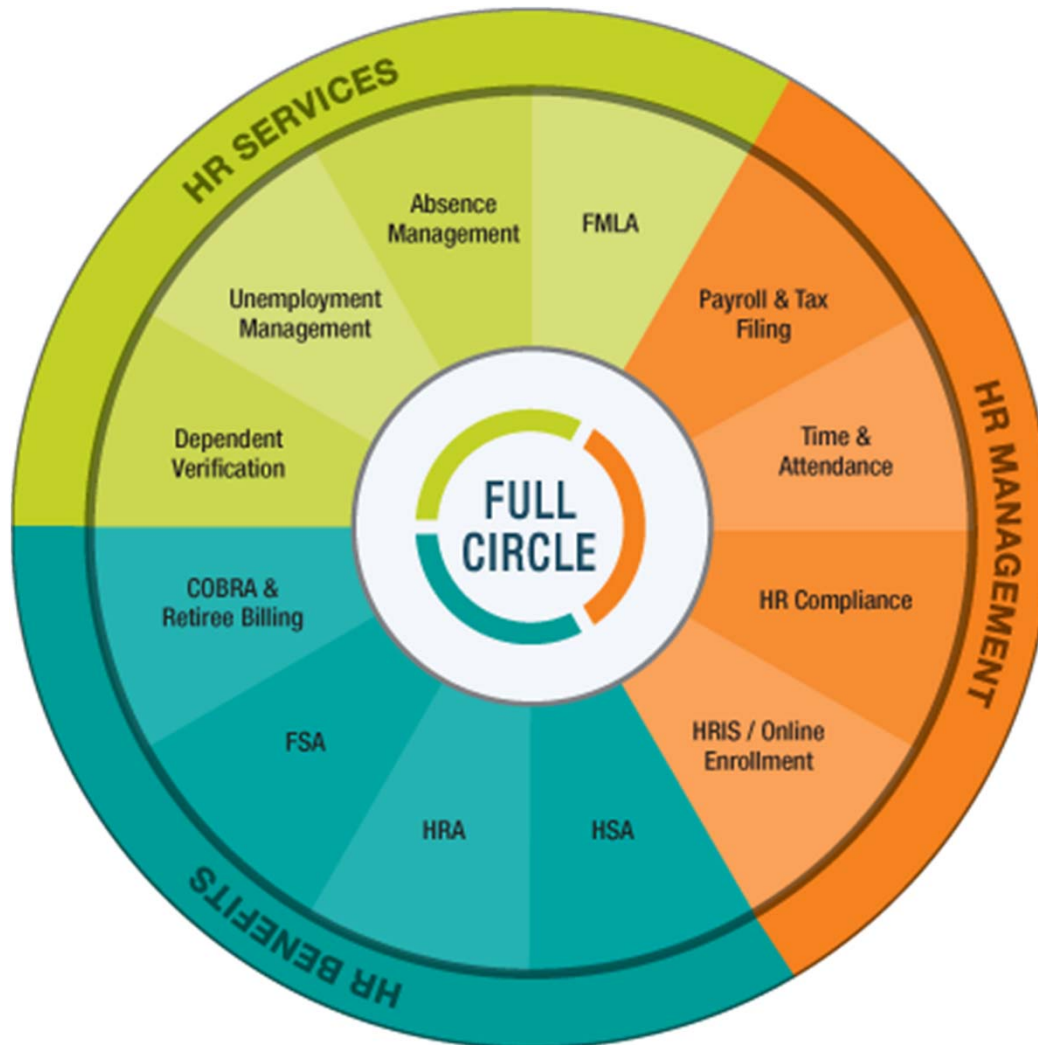
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# What is COBRA?

- **An employer must offer covered employees and/or qualified beneficiaries:**
  - Continued medical, dental and/or vision coverage.
  - Over a specified period of time.
  - Paid entirely by the covered employee or the qualified beneficiary.
  - Triggered by defined events which would cause loss of coverage.
  - Unless the covered employee's employment was terminated due to gross misconduct.

# What is Gross Misconduct?

- COBRA contains no definition of gross misconduct.
- Based solely on the legislative history, it is clear that termination for gross misconduct is not the same as termination simply “for cause.”
- Unfortunately, the courts have not agreed on a common standard to apply in gross misconduct cases.
- Certain federal courts have looked to the unemployment insurance laws of the state in which the court sits because these laws often deny unemployment benefits to employees terminated for “gross misconduct,” “misconduct” or “willful misconduct.”
- One court fashioned the following definition: “Gross misconduct may be intentional, wanton, willful, deliberate, reckless or in deliberate indifference to the employer's interest.”

# When Must Covered Employees be Informed of COBRA Rights?

- **Twice:**
  - When employee first enters employer's medical, dental, vision and or health flexible spending account plan (initial notice).
  - Later at qualifying event.

# When Must Covered Employees be Informed of COBRA Rights?

- **When must initial general notice be given?**
  - Within 90 days after coverage begins
  - Model initial general notices are available
- **How must notices be provided?**
  - Mailed
  - Provided in SPD
- **What information must be provided?**

# Initial Notice

- **This notice must contain the following items:**
  - Name of the employer's plan.
  - Name, address and telephone number for plan administrator or (if different) COBRA administrator (Only the party or parties responsible for providing information about the plan and COBRA upon request needs to be indicated).
  - An explanation of the importance of keeping the plan administrator informed of the participant's or qualified beneficiary's current address.
  - A description of the plan's requirements for qualified beneficiary to provide the notice of qualifying events and the plan's procedures of providing such notices.

# Initial Notice

- **This notice must contain the following items:**
  - A description of the COBRA coverage made available under the plan, including:
    - Identification of classes of individuals who may become qualified beneficiaries;
    - The types of qualifying events that gives rise to the right to COBRA coverage;
    - The obligation of the employer to notify the plan administrator of the occurrence of certain qualifying events;
    - The maximum period for which COBRA coverage may be available;
    - When and under what circumstances COBRA coverage may be extended beyond the maximum period; and
    - The requirements for the payment of COBRA premiums. and
  - A statement that the notice does not fully describe COBRA coverage or other rights under the employer's plan and more complete information is available in the summary plan description.



# What Benefits Must be Provided in COBRA Coverage?

- Covered employees and other qualified beneficiaries must be offered same medical, dental and/or vision coverage available when covered employee was active .
- Cafeteria plan availability.
- Changes to employer's coverage.
- Qualified beneficiaries will have opportunity to change elections at next open enrollment.
- May add other coverages at next open enrollment.

# Health Care FSAs Under COBRA

- To determine whether an account is overspent, an employer must examine the claims activity for a specific qualified beneficiary.
- The determination of whether a qualified beneficiary's account for a plan year is overspent or underspent as of the date of the qualifying event depends on three variables:
  - the elected annual limit for the qualified beneficiary for the plan year (e.g., \$2,400 of coverage);
  - the total reimbursable claims submitted to the health FSA for that plan year before the date of the qualifying event; and
  - the maximum amount that the health FSA is permitted to require to be paid for COBRA coverage for the remainder of the plan year.
- The elected annual limit less the claims submitted is referred to as the “remaining annual limit.” If the remaining annual limit is less than the maximum COBRA premium that can be charged for the rest of the year, then the account is overspent.

# HRAs Under COBRA

- HRAs are subject to COBRA requirements.
- Qualified beneficiaries will have access to unspent HRA balance and will be entitled to additional HRA accruals that active employees receive.
- Each qualified beneficiary will have an independent right under COBRA to continue coverage that was available immediately preceding the qualifying event.

# Who is a Qualified Beneficiary?

- Covered spouse and/or dependent children who were covered and suffered loss of coverage.
- If a dependent not enrolled at time of qualifying event, he or she is not considered qualified and not eligible for COBRA coverage.
- Why is determining if a dependent is a “qualified beneficiary so important? - independent rights to elect COBRA.
- May a Qualified Beneficiary add new dependents?

# What Triggers COBRA Coverage?

- There must a loss of coverage due to:
  - The covered employee's death,
  - A change in the covered employee's employment status—such as the covered employee's termination of employment from the employer or reduction in working hours,
  - The covered employee's divorce or legal separation,
  - The bankruptcy of the employer,
  - The covered employee or any qualified beneficiaries are on military leave,
  - The covered employee elects Medicare as primary coverage, or
  - The covered employee's dependent child loses eligibility for coverage.

# Family and Medical Leave

- If an employee takes FMLA leave, it is generally not considered a qualifying event under COBRA.
- A qualifying event will have occurred if three conditions are satisfied:
  - The covered employee (or spouse or dependent) is covered on the day before the first day of FMLA leave under employer's medical dental and/or vision plan,
  - The employee does not return to work at the end of FMLA leave, and
  - The employee would, in the absence of COBRA coverage, lose coverage under the employer's health plan before the end of the maximum period.

# Family and Medical Leave

- A qualifying event would occur on the last day of FMLA leave.
- The maximum coverage period should be measured from the date of the qualifying event.
- If coverage under the group health plan is lost at a later date and the plan provides for the extension of the required period, then the maximum coverage period would be measured from the date when coverage is lost.
- A qualifying event still may occur if an employee fails to pay the covered employee portion of premiums for coverage under the health plan during FMLA leave, or declined coverage under a group health plan during FMLA leave.
- A determination of when a qualifying event occurs is not affected by any state or local law that requires coverage under a group health plan to be maintained during leave of absence for a longer period than that required under FMLA.
- A right to COBRA coverage may not be conditioned upon reimbursement of the premiums paid by the employer for coverage under a group health plan during FMLA leave.

# What is the Maximum Length of COBRA Coverage?

- 18 months - covered employee's termination.
- 11 month extension – disability.
- 36 months - covered employee's divorce or death
- Second qualifying event - covered employee's termination followed by death or divorce - coverage period?
- Medicare Eligibility before elect COBRA – 36 months for spouse and dependents measured from date of Medicare eligibility.



# When can an Employer Terminate COBRA Coverage Early?

- **Coverage can be terminated early if:**
  - The covered employee or a qualified dependent fails to make a timely COBRA premium payment .
    - Initial premium must be received within 45 days of election of COBRA coverage.
    - Subsequent premium is due the first day of each month and must be paid with 30 days from due date.
  - The covered employee or a qualified dependent receives coverage under another group plan.
  - The employer terminates all health plans.
  - The covered employee or a qualified dependent becomes entitled to Medicare.
  - Determination is made that the covered employee or a qualified dependent is no longer disabled.

## Must a Notice be Given if COBRA Coverage Terminates Early?

- Yes - a plan administrator must give notice.
- Provided as soon as administratively practicable after termination .
- Notice contents.
- Notice can be combined with a certificate of creditable coverage.

# What Notice Must be Given to the Employer?

- **Covered employees must notify the employer of:**
  - Divorce or legal separation if dependent loses eligibility -60 days from later of qualifying event or loss of coverage
  - A dependent child's losing dependent status under the plan - 60 days from later of qualifying event or loss of coverage.
  - Second qualifying event - 60 days from date of second qualifying event.
  - Disability determination - 60 days from later of date of SSA disability determination, date of qualifying event, or date of loss of coverage; and within 18 months from the date of the qualifying event.
  - Change in disability status -30 days after the date SSA determines qualified beneficiary is no longer disabled.

## What Notice Must be Given to the Employer?

- Employers may deny COBRA coverage if proper notice is not given.
- **Qualify for 11 month extension for disability:**
  - Notify within 60 days of disability determination.
  - Not later than the end of 18 month COBRA coverage period.

## Must a Second COBRA Rights Notice be Provided?

- Covered employee and qualified beneficiaries must be informed of COBRA rights within a specified time after the qualifying event.
- Who must be provided this notice? - Covered employee and qualified beneficiaries.
- When must the notice be provided? - After receiving notice of qualifying event, employer must notify PA within 30 days, PA has 14 days to provide notice, 44 days of employer is also PA.
- How must the notice be provided?
- What information must be provided in the notice?

# Election Notice

- **This notice must contain the following items:**
  - The name of the employer's plan;
  - The name, address and telephone number of the party responsible for COBRA administration;
  - The identification, by name or status, of the each qualified beneficiary and their period of coverage
  - An explanation of the importance of keeping the plan administrator informed of the participant's or qualified beneficiary" current address;
  - A description of the qualifying event;
  - The COBRA coverage made available;

# Election Notice

- **This notice must contain the following items:**
  - The maximum period of COBRA coverage available;
  - COBRA coverage termination date;
  - Events that may cause early termination of COBRA coverage
  - Manner in which the qualified beneficiaries must exercise their COBRA rights, including an explanation of the election time periods;
  - A statement that each qualified beneficiary must have an independent right to elect COBRA coverage;
  - Payment requirements;
  - Payment schedule;

# Election Notice

- **This notice must contain the following items:**
  - Payment policies (including grace periods and the consequences of late payment or nonpayment);
  - A statement that the notice does not fully describe COBRA coverage or other rights under the employer's plan and more complete information is available in the summary plan description;
  - Consequences of not electing COBRA coverage (The notice must explain that a covered employee or qualified beneficiary may lose rights under HIPAA by not electing COBRA coverage.); and
  - Information on possible extensions of the 18 month period due to disability or second qualifying event.



# How is COBRA Coverage Elected?

- **COBRA Coverage must be elected within 60 days of notification.**
  - Complete and return forms by deadline.
- **Election to waiver coverage:**
  - Election may be revoked before end of election period.
- **The initial premium is due within 45 days after the election of COBRA coverage.**
- A subsequent premium payments “shall be considered timely if made within 30 days after the date due or within such longer period as applies to or under the plan.”

# What are COBRA Election Rights of Qualified Beneficiaries?

- Each Qualified Beneficiary may independently elect or waive COBRA coverage.
- Covered employee may elect for other dependents.
- Qualified dependents may make separate election.

## What is the Premium Cost for COBRA Coverage?

- Each covered employees and qualified beneficiary is charged a premium on the total cost for “similarly situated” employee.
- The premium cost may not exceed 102% of the applicable plan option premium cost.
- Disabled employees on the special 11-month extension may be charged up to 150% of the applicable plan premium.

# What are the Other Notice Requirements?

- **Notice from the employer to the plan administrator:**
  - 30 days from the date coverage ceased.
- **Notice to employee or dependent who gives notice of a qualifying event but is not eligible:**
  - Notice must explain why they are not eligible.
- **New notices effective for plan years beginning after November 26, 2004.**

# Medicare

- **Entitlement of Medicare may terminate COBRA coverage.**
  - When any qualified beneficiary (including the covered employee) first becomes entitled to Medicare after electing COBRA coverage, his or her COBRA coverage can be terminated early (i.e., before the end of the maximum coverage period.)
  - This rule does not, however, affect the COBRA rights of other qualified beneficiaries in a family unit who are not entitled to Medicare (for example, the spouse and dependent children of a Medicare-entitled former employee.)

# Medicare

- **Entitlement to Medicare extend the period of COBRA coverage.**
  - When a covered employee's qualifying event (i.e., a termination of employment or reduction of hours) occurs within the 18-month period after the employee becomes entitled to Medicare, the employee's spouse and dependent children (but not the employee) become entitled to COBRA coverage for a maximum period that ends 36 months after the covered employee becomes entitled to Medicare.
  - The covered employee remains entitled to a basic maximum period that ends 18 months after the termination of employment or reduction of hours.

# Medicare

- **Entitlement to Medicare before electing COBRA does not terminate COBRA coverage.**
  - When any qualified beneficiary (including the covered employee) is entitled to Medicare before electing COBRA, he or she still has the right to elect COBRA coverage.
  - The COBRA offer cannot be withheld because of Medicare entitlement. And this coverage may not be terminated early because of the Medicare entitlement.

# Medicare

- **Enrolling in COBRA does not preserve an employee's special enrollment rights under Medicare.**
  - COBRA coverage is not considered a group health plan based upon current employment.
  - Individuals who, in order to retain their COBRA coverage, do not enroll in Medicare when first eligible will not have special enrollment rights under Medicare and may expect to pay more for Medicare when COBRA coverage ends.



# Medicare

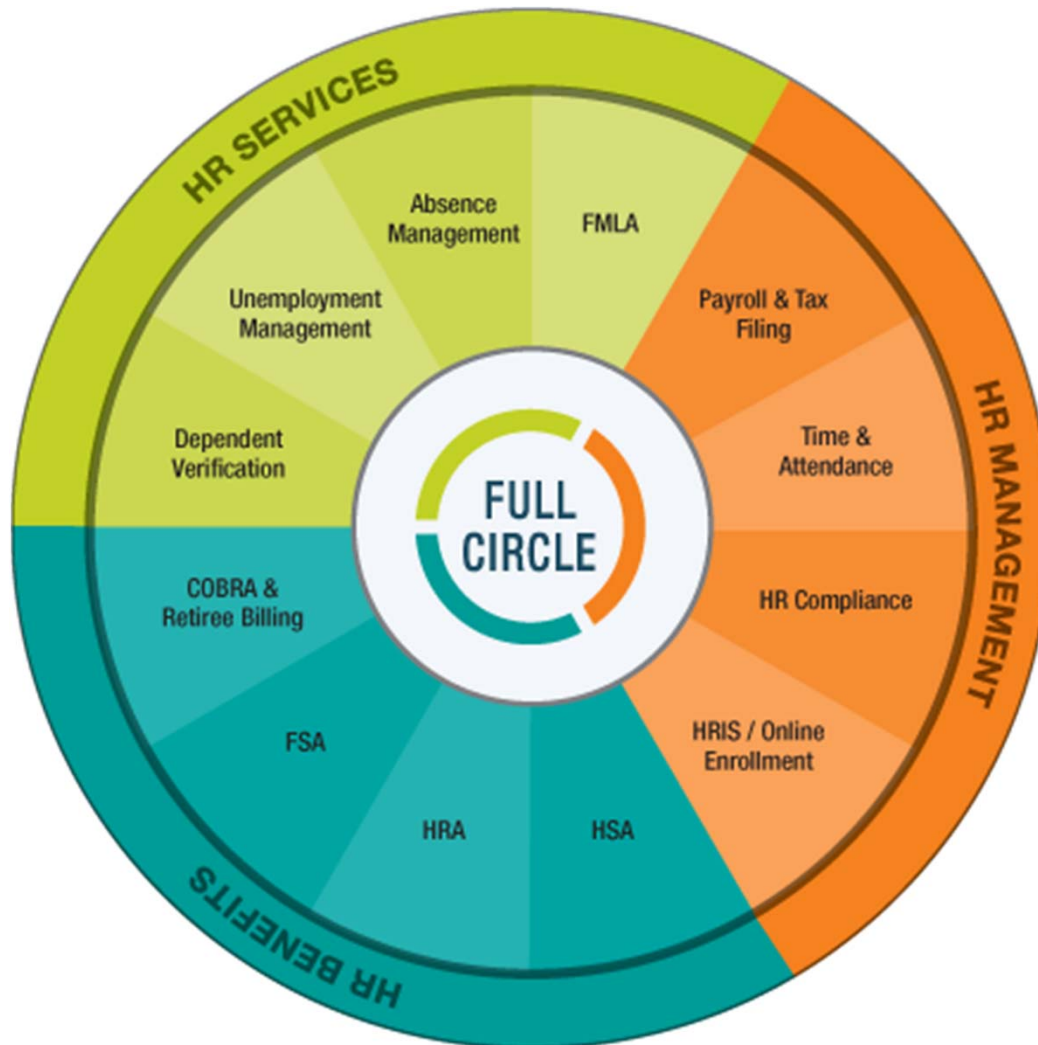
- **A plan must still offer COBRA coverage to retirees when alternative retiree coverage is offered.**
  - Alternative retiree coverage might be offered under the plan covering active employees, or it might be offered under a separate retiree plan.
  - In either case, the employer cannot avoid its obligation to offer COBRA coverage in connection with the employee's retirement simply by providing alternative retiree coverage.

# Medicare

- **A plan does not have to offer COBRA to retirees when alternative retiree coverage expires.**
  - The regulations make it clear that if a retiree (and his or her family) are offered but do not elect COBRA and instead choose alternative retiree coverage available for a fixed period of time, no COBRA election must be offered when the retiree coverage expires.
  - This result would be the same whether retiree coverage is offered under a combined retiree/active plan or under a retiree-only plan.

**Questions??????????**

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