



Top Ten COBRA Mistakes and How to Avoid Them

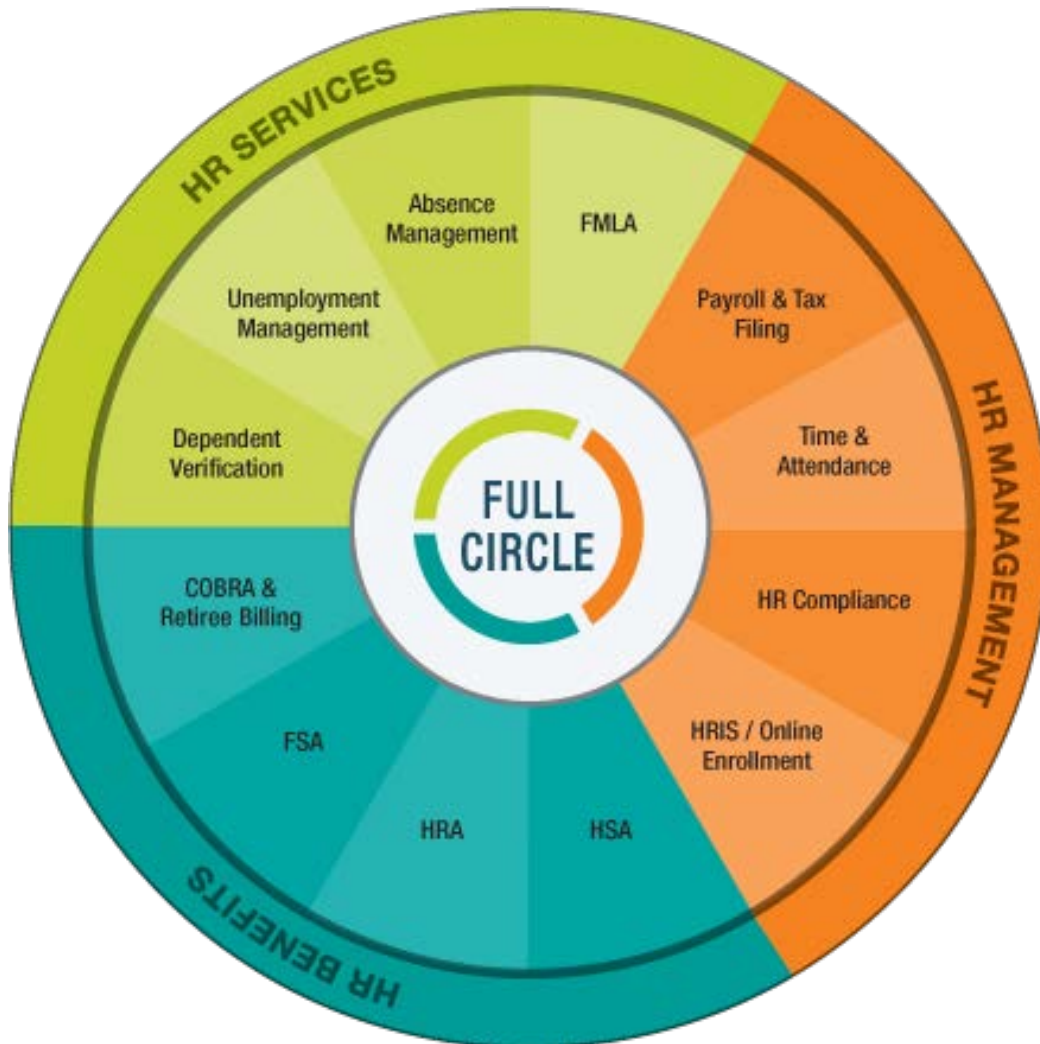
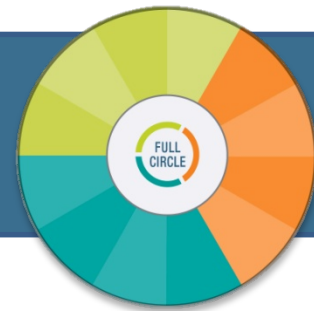
Presented by: April A. Goff & Norbert F. Kugele



- HR Benefits
- HR Management
- HR Services

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What is COBRA?



- **COBRA provides for continuation of existing group health plan coverage for:**
 - Qualifying employees;
 - Covered spouses; and
 - Covered Dependents
- **Legally protected right under the Internal Revenue Code, Employee Retirement Income Security Act of 1974, and the Public Health Service Act.**



Mistake #1: Assuming COBRA Does Not Apply to Your Organization



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Which Employers Must Comply?



- **Employed at least 20 or more employees in prior year**
 - On at least 50% of typical business days
 - Controlled group aggregation rules apply
- **Determined using Full-time equivalents**
 - Part-time employees counted; up to 8 hours per day, 40 hours per week maximum
- **Downsizing employer rule**
 - Shrinking: subject to COBRA until calendar year after the average is less than 20 and can't drop COBRA for grandfathered recipients
- **Statutory Exemptions:**
 - Church = Yes
 - Government = No





Mistake #2: Assuming that COBRA Doesn't Apply to All Group Health Plans



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Any-Employer Sponsored Plan Providing Medical Care Under Code Section 213(d)



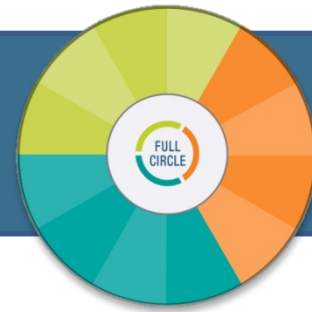
- Medical
- Prescription Drug
- Dental
- Vision
- Substance Abuse
- Mental Health
- Disease Management Programs
- Health Flexible Spending Accounts
- Health Reimbursement Accounts
- Employee Assistance Programs (maybe)
- Wellness Programs (maybe)
- On-site Clinics (maybe)

Unaffected Plans and Programs



- Life Insurance
- Short-Term Disability
- Long-Term Disability
- Accidental Death & Dismemberment
- Dependent Care FSA
- Long-Term Care Plan
- On-site gyms
- Health Savings Account Contributions Program
- Medical Savings Account
- Workers' Compensation
- On-site Clinics (maybe)

Quirky Wellness Program Rules



- **Wellness incentives:**
 - Don't have to offer to COBRA beneficiaries if \$ outside the health plan
 - May not have to reduce COBRA premium by amount of premium reduction offered to active employees
 - Benefits of wellness Programs must be offered
 - Must offer incentives such as lower deductibles, copayments, etc.



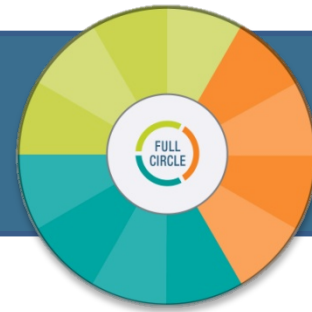
Mistake #3: Failing to Provide Necessary Notices



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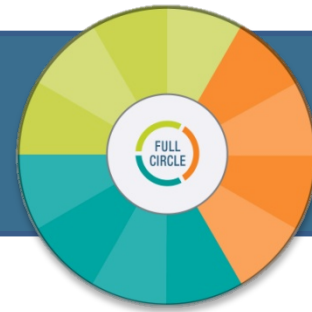
Required Notices



- **Notices Required:**
 - Initial General Notice;
 - Employer’s Notice of Qualifying Event;
 - Qualified Beneficiary Notices;
 - Election Notice following Qualifying Event;
 - Notice of Unavailability of Coverage; and
 - Notice of Early Termination of Coverage



Initial General Notice



- **Describes COBRA rights and responsibilities**
- **Distributed no later than 90 days from date employee and spouse first become covered under Plan**
 - How to Distribute? SPD sufficient?
 - First class mail to home;
 - Shared mailing o.k. if shared address
 - Separate notice if spouse at a different address or added after employee

Initial General Notice – Content Requirements



- Plan Name
- Name, address and phone number of party responsible for providing additional information about COBRA;
- Classes of individuals who may become qualified beneficiaries;
- Description of qualifying events;
- Employer's obligation to inform plan administrator of certain qualifying events;
- Maximum continuation period;
- When continuation may be extended beyond the original maximum period; and
- Premium payment requirements



- **Failure to provide the Initial General Notice extends an individual's right to elect COBRA until after the notice is provided.**
 - This can extend the right to elect even after the COBRA period would have completely run!
- **Are you relying on your SPD? Should you be?**

Employer's Notice of Qualifying Event



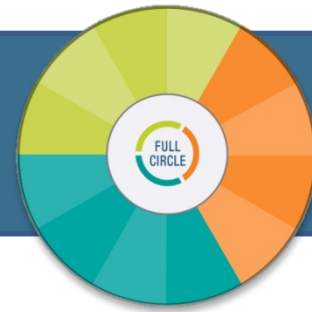
- **Employer sends to Plan Administrator**
 - Termination of employment
 - Reduction of work hours (causing loss)
 - Death
 - Medicare Entitlement
 - Bankruptcy
- **Must be sent within 30 days after the qualifying event**

Notice the Qualified Beneficiary Owes the Plan



- **Qualified Beneficiary must notify the plan administrator in the event of:**
 - Divorce or legal separation or
 - Loss of dependent status
- **Must notify the plan within 60 days after the latest of the date of:**
 - Qualifying Event date
 - Date Qualified Beneficiary loses coverage due to Qualifying Event or
 - Date the Qualified Beneficiary is informed of responsibility to provide notice and plan's procedures for doing so

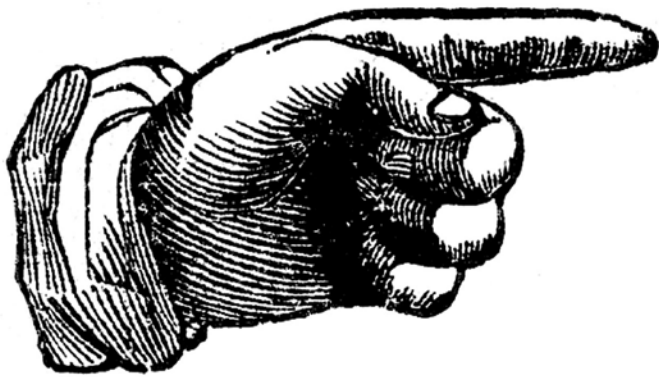
Qualified Beneficiary Notices



- **Sent when coverage lost due to:**
 - Divorce or legal separation
 - Child's loss of dependent status
 - Second qualifying event happens
 - SSA's disability determination begins or ends
- **Must be sent within:**
 - 60 days after qualifying event or determination of disability or
 - 30 days after determination that disability has ended

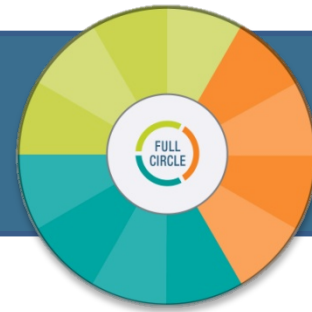


Please Notice This



- **Plan can establish reasonable notification procedures**
 - Explain in SPD
 - Can use a specific form if:
 - Easily understandable and
 - Available without cost

Election Notice



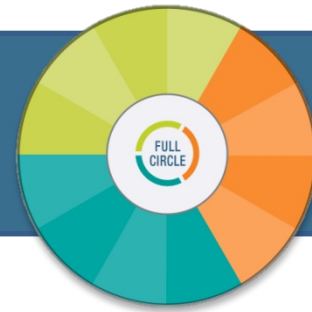
- Must be provided to each affected Qualified Beneficiary
- Can use single election notice if all reside at same address
- Must be sent within 14 days after receiving notice of qualifying event (or 44 days after qualifying event if employer is also plan administrator)
- Model notice provided by DOL

Notice of Unavailability of Coverage



- **Only needed if administrator receives notice of qualifying event but individual is not entitled to COBRA**
 - Also applies to second qualifying events and extensions
- **Must explain why coverage is unavailable**
- **Deadline is the same as providing the initial election notice**

Notice of Early Termination of Coverage

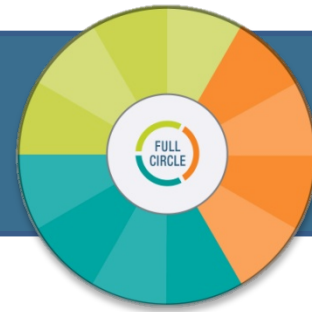


- **Only required if COBRA period ends before maximum coverage period**
- **Must include:**
 - Reason for termination of coverage
 - Effective date of termination
 - Alternative coverage options (conversion rights)
 - Suggest including information re:
Marketplace/Exchange



- **Can be mailed by certified mail or first class general mail to last known address**
 - Think about it from a potential litigation standpoint down the road
 - Good faith effort sufficient if notice is not actually received
 - Must have adequate procedures and records in place

Penalties



- **Individuals may bring suit under ERISA (for private employers) and PHSA (against governmental employers)**
- **Can recover:**
 - Back payment of claims
 - Attorneys' fees
 - Penalties up to \$110 per day
- **Excise Taxes can be assessed by IRS**





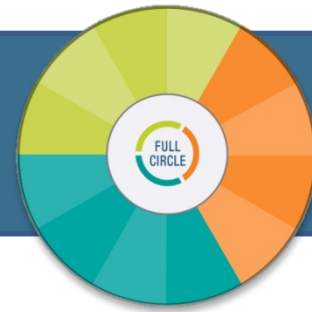
Mistake #4: Failing to Recognize all Qualified Beneficiaries



- HR Benefits
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- HR Services

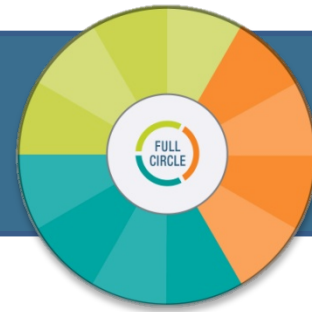
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Qualified Beneficiaries



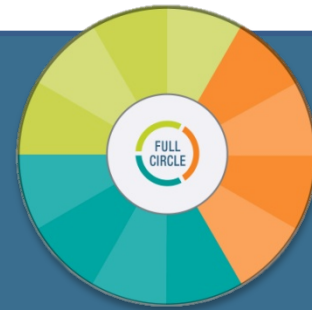
- **Include:**
 - Employees
 - Former employees (e.g., retirees)
 - Independent contractors receiving group health coverage
 - Dependents (under Code Section 152) of the above
- **Qualified Beneficiaries have independent COBRA rights**

Qualified Beneficiaries



- **Does not include:**
 - Domestic Partners
 - Individuals who are eligible to enroll but are not enrolled:
- **Qualified Beneficiaries must be actually covered under the plan on the day before the Qualifying Event**

Pitfall for the Unwary – Cancellation in Anticipation of Divorce



- **Cancellation of coverage in anticipation of a divorce**
 - Individual eligible to elect COBRA even if they weren't covered at the time of the Qualifying Event.



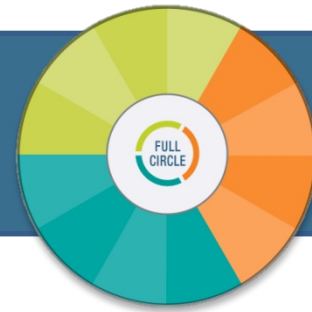
Mistake #5: Failing to Provide The Appropriate Length of Coverage



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Required Length of COBRA Coverage



- **18 Months**
 - Termination of employment
 - Reduction in work hours
- **36 Months**
 - Death
 - Divorce or legal separation
 - Dependent ceasing to meet eligibility requirements
 - Employee's *entitlement* to Medicare
- **Retiree Rule**
 - Retirees who lose coverage within one year before or after their former employer's bankruptcy have a special rule

Disability Extension



- Must be deemed disabled by SSA within 60 days after termination of employment or reduction in work hours
- Coverage period extended from 18 to 29 months
- Extension applies to all covered Qualified Beneficiaries
- Plan may require notice/proof within 60 days of SSA determination

Second Qualifying Event Extension



- Second qualifying event must occur within 18 months after termination of employment or reduction of work hours or during disability extension
- Maximum COBRA period extends to 36 months from the date of the first qualifying event
- Second qualifying event must fit within specific categories

Medicare Extension



- **If Employee's dependent becomes entitled to Medicare within 18 months before termination of employment, COBRA can continue until later of:**
 - 36 months after Medicare entitlement date, or
 - 18 months after termination of employment or reduction of work hours.
- **“Entitled” = Eligible + Enrolled**

When does COBRA end?



- Maximum COBRA period ends
- Last day premiums paid through
- Qualified Beneficiary becomes covered by another group health plan (after electing COBRA)
- Qualified Beneficiary becomes entitled to Medicare (after electing COBRA)
- First of the month after 30 days of determination not disabled by SSA
- Employer (and entire controlled group) terminates group health plans



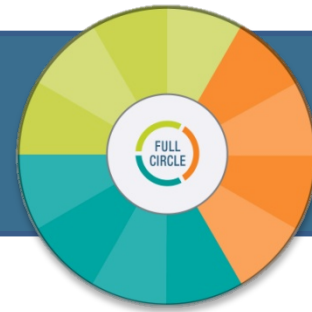
Mistake #6 Failing to Recognize Qualifying Events



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Qualifying Events

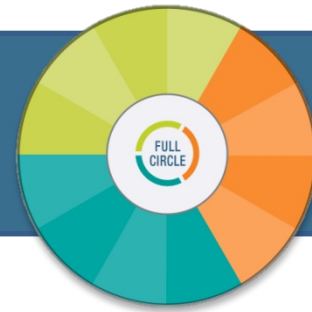


- **Must cause a “loss of coverage”**
 - No longer covered under same terms and conditions as before the Qualifying Event
- **Different time periods for different events**
- **Applies to affected Employee and all other Qualified Beneficiaries**

What is NOT a qualifying event?



- **Commencement of FMLA leave**
 - Coverage continued as if active employment
 - Termination of leave, however, is a qualifying event if they do not return to work
 - Even if they did not maintain coverage during the leave!
 - Even if they didn't repay premiums in arrears during FMLA leave!
- **Modification or termination of the plan**
- **Chapter 11 Bankruptcy for non-retiree**



- **18-Month Coverage Events:**

- Termination of employment

- Voluntary or involuntary
- Includes strike or layoff
- Does not include gross misconduct

- Reduction in work hours

- PPACA implications of new eligibility rule

- Can be extended due to disability or second qualifying event

Gross Misconduct



- **A termination of employment due to “gross misconduct” does not give rise to COBRA rights.**
 - Must be intentional or willful misconduct
 - Ordinary negligence or incompetence insufficient
 - Courts are inconsistent with this rule, so exercise caution

Chapter 11 Bankruptcy



- **Chapter 11 Bankruptcy is a qualifying event for retirees, spouses and covered dependents if:**
 - Employer files for bankruptcy and
 - Coverage substantially eliminated within one year before or after bankruptcy filing
- **Chapter 11 Bankruptcy filing is NOT a Qualifying Event for active employees, even if they lose coverage because plan is terminated!**

Qualifying Events for Spouses/Dependents



- **Qualifying Event must result in a loss of coverage.**
- **Includes:**
 - Employee's termination of employment (gross misconduct exception still applies)
 - Employee's reduction in hours of employment
 - Divorce or legal separation from employee
 - Death of employee
 - Employee's entitlement to Medicare (typically would not result in loss of coverage)
 - Loss of dependent status



Mistake #7 – Failing to Offer the Right Kind of Coverage



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COBRA Coverage Must Be Identical



- **COBRA coverage must be identical to active coverage**
 - If active coverage changes, COBRA must change
- **COBRA beneficiaries must be provided with open enrollment rights**
 - Same basis as active employees.
 - Same options, including right to move to any new coverage option or add dependents
 - Deductibles paid before the Qualifying Event carry forward
 - Watch for tier changes!
- **HIPAA Special Enrollment rules apply to COBRA beneficiaries**
- **If conversion option exists, must offer at end of COBRA period**

Early Termination of COBRA



- **Nonpayment of premium within grace period**
- **Medicare entitlement after electing COBRA coverage**
 - Timing here is crucial. Which came first?
- **Coverage under another employer's group health plan**
 - Eligibility is insufficient, must be actual coverage
 - If covered before electing COBRA, can coincide
- **Plan termination**



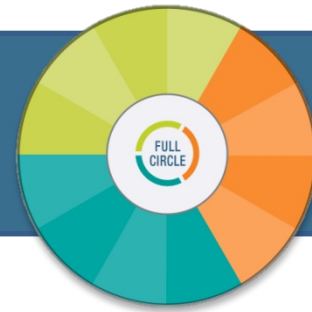
Mistake #8 – Making a Mistake with COBRA Premiums



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Maximum COBRA Premium



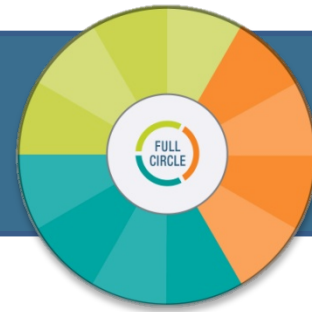
- **Can charge 102% of total cost of providing coverage to “similarly situated” individuals**
 - Insured plan vs. Self-funded
 - Can go to 150% during disability extension (remains at 102% for non-disabled family members)
- **Must use appropriate tier of coverage, e.g., single, single plus one or family coverage**
- **Premiums must be fixed for at least a 12-month period**

COBRA Premiums



- **Monthly payments must be allowed**
- **Grace period must be allowed of at least:**
 - 45 days after election of coverage – must be all premiums through payment date!
 - 30 days after first day of each month
 - Must be consistently applied
- **If Qualified Beneficiary is incompetent, payment deadline must be extended**
- **Plan may pend claims until election and payment received**

Premium Shortfalls



- **“Insignificant Shortfall”:**
 - Lesser of \$50 or 10% of the premium due
- **Plan can take following action for shortfall:**
 - If insignificant, accept as full payment of the premium; or notify beneficiary and require repayment within a reasonable period (at least 30 days).
 - If significant, can cancel coverage

Premium Issues



- **Any third party can pay premium**
 - Hospitals often pay to be reimbursed
- **Premiums considered paid when mailed, NOT when received**





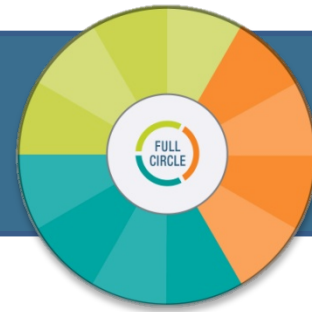
Mistake #9 – Improperly Handling Retiree Issues



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Retiree Complexities



- **Retiree coverage can be offered in lieu of COBRA coverage**
 - COBRA must still be extended to dependents upon termination of employment or occurrence of qualifying event
- **Retiree coverage can be designed to run concurrently with COBRA**
 - First 18 months are COBRA
 - Must be carefully drafted in plan



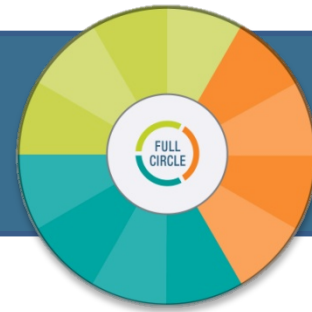
Mistake #10 – Failing To Address PPACA Issues



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PPACA Concerns



- **Coverage must be offered until end of month of 26th birthday for dependents**
- **Cannot rescind coverage without 30 days' advance notice**
 - Does not apply due to fraud, intentional misrepresentation or failure to pay required premiums
- **Nondiscrimination concerns for insured plans?**



- **Interaction of COBRA with Stability Period if using a look back measurement period**
 - Employee no longer measures full-time – when does COBRA period begin?
- **Do you report COBRA coverage on 1094-C or 1095-C?**
- **New DOL model notice includes description of Marketplace and provision that individuals may be eligible for subsidized coverage through the Marketplace**
 - Include in your SPD too!



Questions



- HR Benefits
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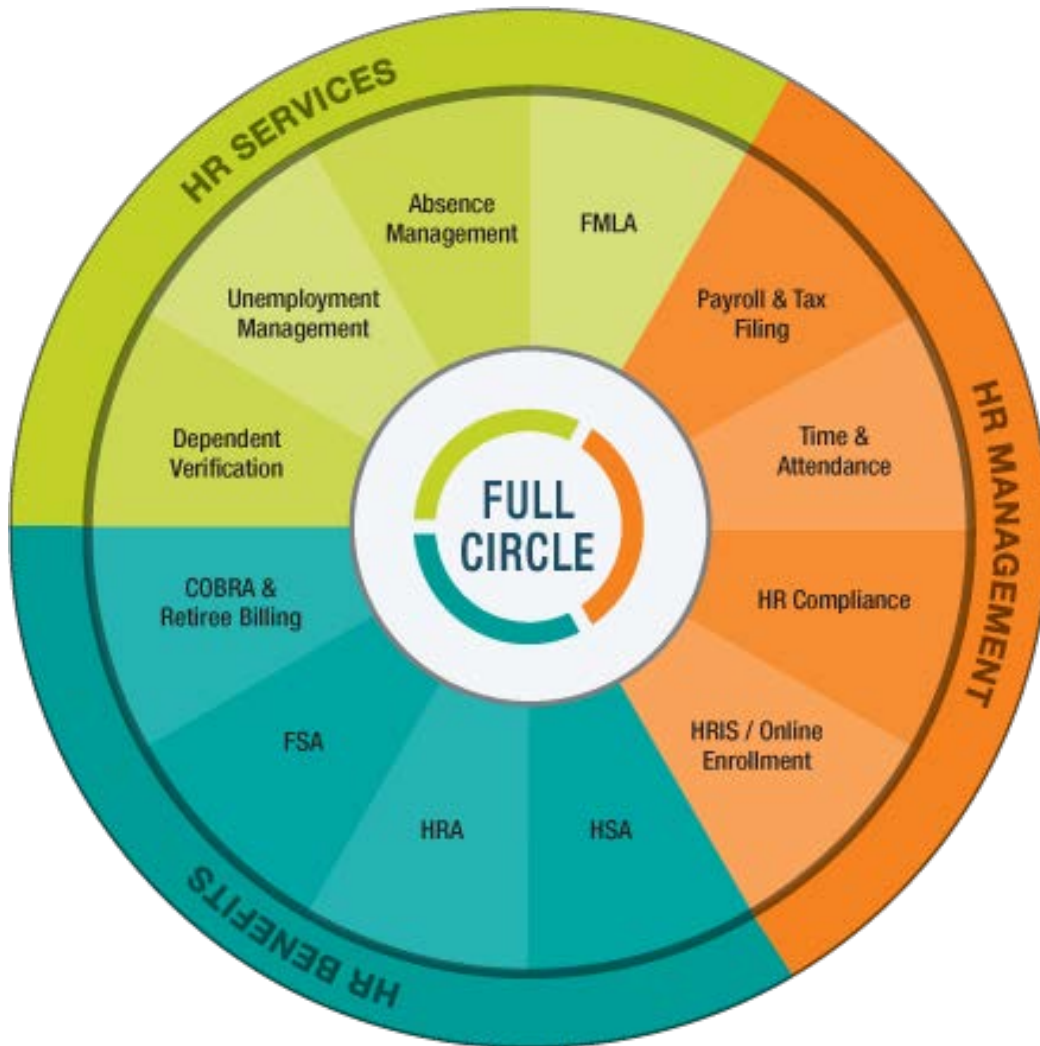
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Contact the Presenter



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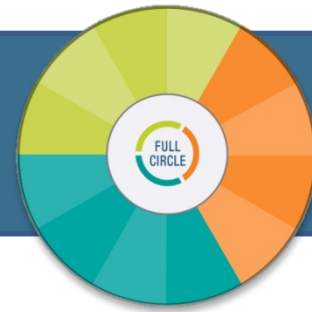


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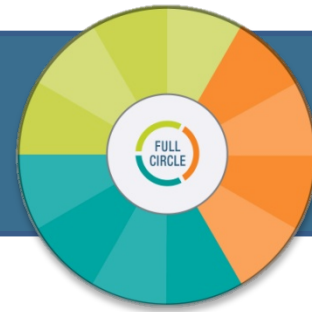
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