

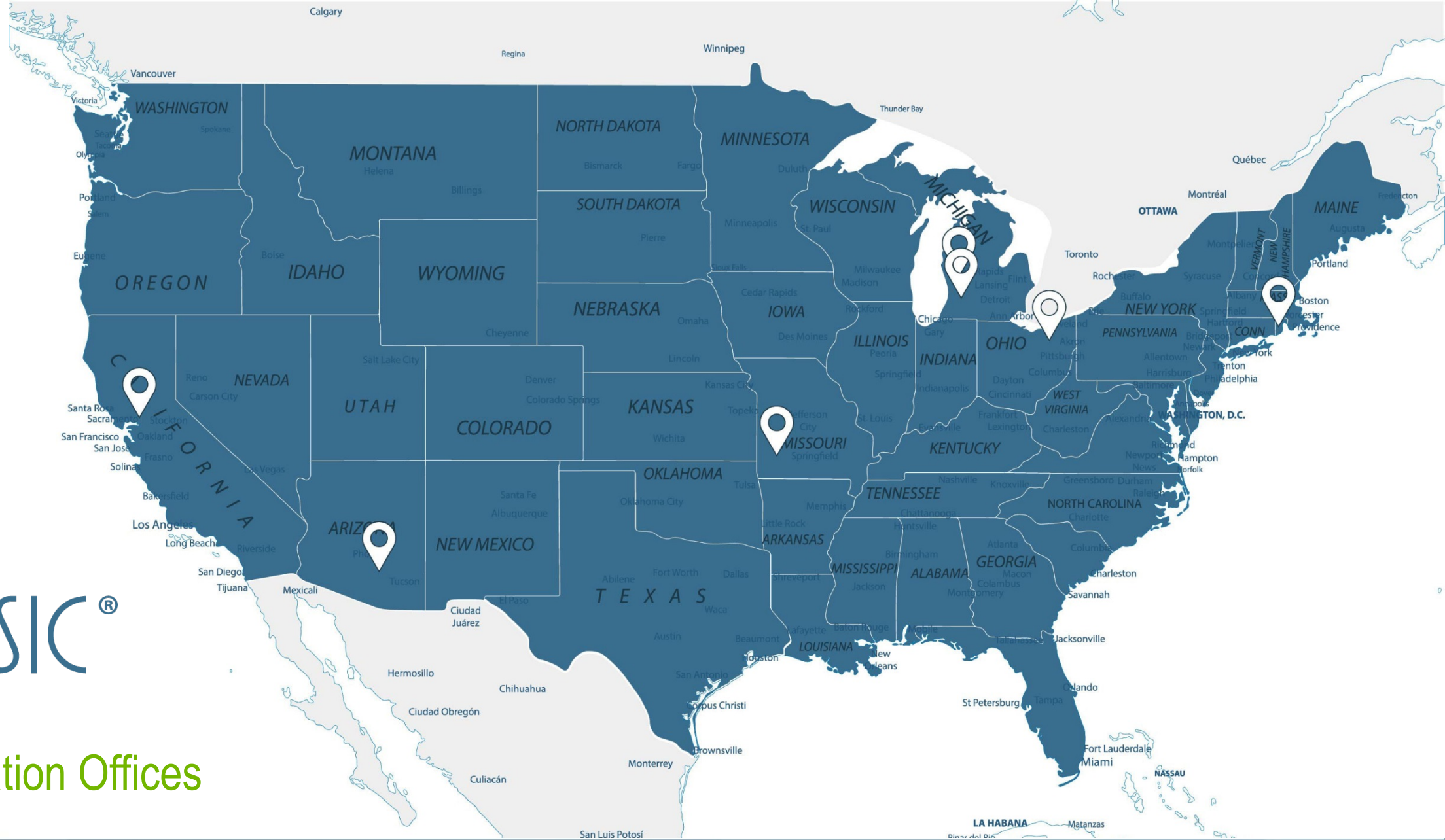


Understanding COBRA Regulations

Including Continuation Coverage During COVID-19



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Administration Offices



BASIC family of companies includes;

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HR Solutions should be simple. **Keep it BASIC.**

➤ Presenter



Tammy Parr

Tammy Parr is a Regional Director at BASIC serving the New England region. With over 35 years of experience working with COBRA, Tammy leverages her expertise to ensure clients and insurance brokers are fully compliant every step of the way. Clients appreciate Tammy's extensive regulatory knowledge, which allows her to recognize and satisfy personalized needs for companies of all sizes and industries. Insurance brokers love working with Tammy because they know she wants the best for their clients.

➤ What is COBRA?

- “COBRA” = Consolidated Omnibus Budget Reconciliation Act of 1986, as amended
- 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

➤ Who must comply with COBRA?

- All employers with over 20 employees on 50% of their typical business days in the preceding calendar year
- Common Ownership
- Exceptions
 - Small employer plans, government plans, church plans
- 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

➤ Who Qualifies?

- **Qualified beneficiary rights** - Qualified beneficiaries have the same rights, under the same terms and conditions, as a similarly situated non-COBRA beneficiary (active employee)
 - Qualified beneficiaries additionally have independent election rights



➤ Events

- Voluntary termination
- Involuntary termination
 - Gross misconduct exception
- Reduction of employee's hours
 - Change in premium arrangement
- Death of employee
- Divorce or Legal Separation
 - Removals in anticipation of the event
- Medicare Entitlement (in extremely rare circumstances)
- Dependent Child ceasing to be a dependent

➤ FMLA Leave of Absence

- Beginning of FMLA leave *is not* a qualifying event
- End of FMLA leave *is* a qualifying event *if* employee does not return to work
 - Even if employee did not maintain coverage during FMLA leave
 - Even if employee doesn't repay premiums in arrears during leave

Eligible Coverages

Eligible

- Medical
- Dental
- Vision
- Prescription
- Health FSA
- HRA
- Certain EAPs

Not Eligible

- Dependent Care FSA
- HSA
- LTD
- STD
- Life Insurance

➤ Notices

- **Qualifying Event Notice** - Informs all qualified beneficiaries of their right to continue health insurance under COBRA. Provide First Class mail with certificate of mailing
 - Needs to be postmarked within 44 days of a qualifying event
 - Typically includes COBRA election form
- **General Notice** - Informs employees of their COBRA rights and responsibilities
 - Needs to be postmarked within 90 days of enrollment in the new plan

➤ Notices (cont.)

Notice from QB to the plan administrator

Divorce, Dependent ceasing to be a Dependent, Secondary Event, Disability Determination, or no longer deemed disabled

- Has to be reported within 60 days of the later of:
 - Qualifying event date, loss of coverage date, or date the QB is informed they have to report (i.e., general notice)



➤ Notices (cont.)

- **Notice of unavailability** - 44 days from being informed of a request
- **Conversion notice** - Within the last 180 days of COBRA
- **Early termination** - As soon as administratively possible
- **Expiration** - During the last 60 days of COBRA



➤ Notices (cont.)

- **Notification of plan changes** - 60 days from the plan change being adopted
- **Notice of insignificant premium underpayment** - as soon as possible
- Disclosure to a health care provider
- Invoices or coupon books
- **Bonus** - Open enrollment notifications



➤ 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
- Plan may pend claims until election and payment received

➤ Audits

- The IRS is the auditing arm for COBRA
 - Mail audit
 - Combo audit
 - Complaint driven audit
- The IRS uses the TAMRA 1988 criteria to measure COBRA compliance
 - Technical and Miscellaneous Revenue Act of 1988



➤ TAMRA Criteria

- Training for the individuals responsible for COBRA compliance
- Written instructions for administering COBRA
- The plan is designed and updated based on competent professional advice
- The plan is monitored by independent auditors

➤ TAMRA Outcomes

Penalties can be ruled in one of two ways:

- **Reasonable Cause** - The infractions have been corrected within 30 days and the TAMRA criteria has been implemented
- **Willful Neglect** - The infractions have not been corrected within 30 days, and the TAMRA criteria has not been incorporated

Penalties - Non Compliance can be costly



TAMRA penalties are \$100 per day per violation for one individual, and \$200 per day per violation for two or more individuals



ERISA penalties are \$110 per day per family member



Court costs
COBRA is one of the most litigated areas of benefits



Claims risk

➤ Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

No changes to the regulations for COBRA

Including:

- Subsidizing premiums
- Extending coverage periods
- Extending election or payment grace period

➤ Furlough vs. Layoff

The primary difference between a furlough and a layoff is its impact on the employment relationship.

- Furlough: active employment status is maintained, and the employee has a reasonable expectation to return to work
 - Unpaid furloughs are typically treated the same as an unpaid leave of absence
- Layoffs: typically mean employment and benefits are terminated
 - Resulting in a COBRA event

➤ Employer Warnings

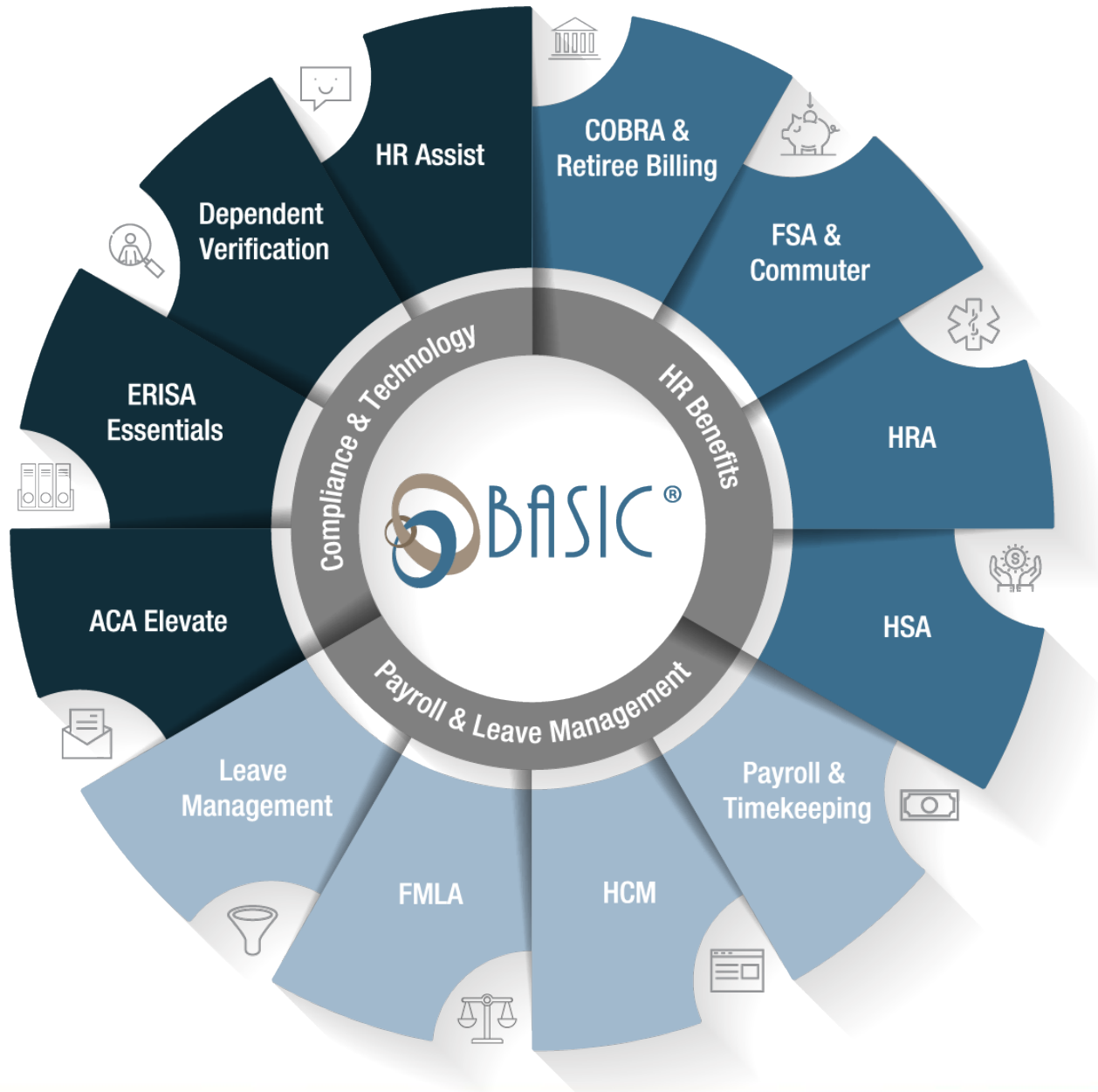
- Currently there are no changes to the COBRA regulations regarding grace periods for elections or payments
- Employers should contact carriers prior to voluntarily offering grace periods
- Some carriers have restrictions prohibiting exception
- If an extension is allowed, it should be provided to all employees

➤ Going Out of Business COBRA Obligation

- All plans will cease to exist, there is no obligation to offer COBRA to employees losing coverage
- At this time, we recommend that any employees losing coverage due to a permanent closure refer to the Health Insurance Marketplace at www.HealthCare.gov or call 1-800-318-2596 to find a plan that works for them

Questions





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