



What's New With COBRA?

April 15, 2021

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➤ Presenter



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➤ Overview

- What is COBRA, again?
- COVID-19 “Outbreak Period” issues
- COBRA provisions under American Recovery Plan Act (ARPA)
- COBRA best practices for common issues, Outbreak Period, and ARPA



➤ 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



➤ 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



➤ Consequences of Failing to Comply with COBRA

- IRS excise taxes of \$200/day
- Statutory penalties of \$110/day
- Qualified beneficiaries can sue to recover COBRA coverage
 - Claims may not be covered by plan or stop-loss policy
- Courts may impose “other equitable relief”
- Attorney fees imposed if plaintiff is successful in court

➤ “Outbreak Period”

- Presidential national COVID-19 emergency declared March 1, 2020
- IRS/DOL/HHS issued joint guidance suspending certain deadlines
 - COBRA premium due dates
 - COBRA election window

➤ End of “Outbreak Period”

- Federal law limits benefit plan deadline suspensions to one year
 - One year from March 1, 2020 national COVID-19 emergency declaration?
 - Or one year measured on an individual-by-individual basis?

➤ End of “Outbreak Period”

- Guidance issued in February stating that one-year deadline suspension limit is measured on an individual-by-individual basis
- Individual’s suspended deadline ends the earlier of:
 - One year after original deadline, or
 - 60 days after the announced end of the presidential COVID-19 national emergency

➤ End of “Outbreak Period”

Example #1

Greg’s monthly COBRA premium payment was due April 1, 2020. Normally, his employer’s plan has a 30-day grace period to pay COBRA premiums. Greg’s April 2020 COBRA premium is due by April 30, 2021, one year from the date his April 2020 COBRA premium would have been due if not for the Outbreak Period relief.

➤ End of “Outbreak Period”

Example #2

Deonna’s monthly COBRA premium payment was due March 1, 2021. Normally, her employer’s plan has a 30-day grace period to pay COBRA premiums. Deonna’s March 2021 COBRA premium was due by March 30, 2021. Assume that, hypothetically, President Joe Biden announces that the COVID-19 national emergency ends on July 1, 2021. Deonna’s due date to pay her March 2021 COBRA premium is suspended until August 29, 2021 (i.e., 60 days after the announced end of the presidential COVID-19 national emergency). This means Deonna’s new due date for her March 2021 COBRA premium is September 28, 2021.

➤ End of “Outbreak Period”

Example #3

Nick received a COBRA election notice on February 1, 2020. Nick’s COBRA election window was suspended on March 1, 2020, when the Outbreak Period began. Nick has until April 1, 2021 to elect COBRA, one year from the date he would have had to make the election if not for the Outbreak Period relief.

➤ End of “Outbreak Period”

- Employers have a duty to notify individuals that their one-year limit on suspended deadlines is expiring

➤ American Recovery Plan Act

- 100% COBRA premium subsidy
 - Tax credits
- Special election period
- 90 day window to change plan option (optional)

➤ ARPA – COBRA Subsidies

- 100% COBRA premium subsidy available to “assistance eligible individuals” (AEIs) April 1 – September 30
 - Medical, dental and vision insurance
 - Employer can’t require AEI to pay premium, and then require AEI to seek reimbursement
- AEI’s qualifying event must be either:
 - involuntary termination of employment
 - reduction of hours (does not need to be involuntary)

➤ ARPA – COBRA Subsidies

- Subsidized coverage will end if the AEI:
 - Becomes eligible for another employer's group health plan
 - Health FSAs, excepted benefits, qualified small employer HRAs do not count
 - Becomes eligible for Medicare
 - COBRA enrollee must notify employer/plan of other plan or Medicare eligibility, or face tax penalties
- Employer's notice requirements
 - Entitlement to subsidy (DOL issued model notice on April 7th)
 - Subsidy expiration (DOL issued model notice on April 7th)

➤ ARPA – COBRA Subsidies

- Unclear in statute who is eligible to claim tax credit under Tax Code Section 6432(b)
 - Tax credit is claimed against payroll taxes
 - If credit amount exceeds payroll taxes, will get a refund
- 6432(b): For insured benefits, insurer can claim the tax credit.
- But 6432(c) (revised in Senate) removes refund mechanism for an insurer
 - So an employer can't seek a tax credit for insured coverage, but there's no mechanism for an insurer to claim the tax credit??
- Need direction/interpretation from IRS!

➤ ARPA – Special Election

- AEs get “second bite of the apple” if, prior to April 1, 2021:
 - AE did not elect COBRA, but would have been eligible for subsidized COBRA if they did; or
 - AE elected COBRA and discontinued coverage, but would have been eligible for subsidized COBRA if they continued coverage
- Employer must provide notice by May 31, 2021
 - DOL issued model notice on April 7th
- Special election period begins April 1, 2021, ends 60 days after date employer provides the notice
 - **Note:** the Outbreak Period suspended deadline relief does NOT apply to the 60 day special election window

➤ ARPA – Special Election

- If elected, COBRA coverage retroactive back to April 1, 2021
 - **Note:** Outbreak Period suspended deadline relief could also allow AEI to elect coverage retroactive back to an earlier qualifying event date
- COBRA coverage does not extend beyond the end date of original COBRA coverage period
 - Example: Sonia had an involuntarily termination and her COBRA coverage would have started on December 1, 2019, if she had elected it. Sonia properly elects COBRA coverage under her special election right. Sonia will have subsidized COBRA coverage from April 1, 2021 to May 31, 2021

➤ ARPA – Optional plan changes

- Optional: Allow AEs to enroll in a medical plan option with a lower premium than the option they had at the time of qualifying event
- Change must occur within 90 days of date employer provides notice

➤ Costly Mistake #1
Failing to Provide COBRA Election Notice



➤ Election Notice

- Must be provided to each affected qualified beneficiary
 - Employee
 - Covered dependents
 - Covered spouses
- 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)
- Caution if using DOL's model election notice verbatim



➤ Tips for Avoiding Costly Mistake #1

Normal Rules:

- Routinely run audits of employee data
- Timely communicate employee data to COBRA TPA
- Fixing a failure to provide a notice
 - Provide notice as soon as possible!
 - May require drafting special COBRA election forms and special election procedures



➤ Tips for Avoiding Costly Mistake #1

Outbreak Period issues:

- Identify employees who had a qualifying event after March 1, 2020, but did not return COBRA election packet
- Identify when a former employee's one-year suspended deadline is expiring, and send notice
- Ask COBRA TPA for help



➤ Tips for Avoiding Costly Mistake #1

ARPA issues:

- Identify employees who had a reduction in hours or an involuntary termination of employment since October 2, 2019, and send special election notice
- Include premium subsidy notice in COBRA election packet for employees who lose coverage due to an involuntary termination or reduction in hours after April 1st, but before September 30th
- Ask COBRA TPA for help

➤ Costly Mistake #2
Incorrectly Handling COBRA Premiums

➤ COBRA Premiums

- Normal Rules:
 - 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

➤ COBRA Premiums

- Outbreak Period issues:
 - Premium deadlines suspended for up to one year during “Outbreak Period”
 - Can pend claims if payment not made, but must re-process pending claims if payment is made by new due date
- ARPA issues:
 - 100% COBRA premium subsidy from April 1 – September 30 for AEIs



➤ Tips for Avoiding Costly Mistake #2

Normal Rules:

- Ensure procedures are in place to administer the grace period
- Establish procedures and framework to determine if there is an “insignificant” shortfall
 - Can’t cancel coverage for non-payment, if shortfall is “insignificant”
- Put notification procedures in place to alert qualified beneficiary to shortfall



➤ Tips for Avoiding Costly Mistake #2

Outbreak Period issues:

- Identify COBRA enrollees who stopped paying COBRA premiums after March 1, 2020
- Track one-year limit for each individual's original premium due date, and send notice about expiration of suspended due date
- Ask COBRA TPA for help



➤ Tips for Avoiding Costly Mistake #2

ARPA issues:

- Identify current COBRA enrollees, and send subsidy notice
- Include subsidy notice in future COBRA enrollees' election packets
- Ask COBRA TPA for help



Costly Mistake #3

- Failing to Identify COBRA Issues in Severance Agreements



➤ Coordinating COBRA and Severance

- Extension of group health plan coverage and/or COBRA premium subsidies common in severance agreements
- Severance agreements are not a substitute for COBRA compliance
- Poorly drafted severance agreements can cause confusion regarding when COBRA coverage begins



➤ Special Severance Issues

- Will insured plans or plans with stop-loss insurance cover claims, if COBRA coverage period is extended?
- Pretax COBRA premium payments only allowed from severance pay through the end of the year
 - Cafeteria plan must include appropriate language
- Discrimination issues



➤ Tips for Avoiding Costly Mistake #3

- Address COBRA in severance agreements
 - Be specific!
- Review insurance certificates and policies
 - Will claims be covered if group health plan coverage extends beyond COBRA maximum period?
- Review cafeteria plan documents if offering pretax payment of COBRA premiums

QUESTIONS



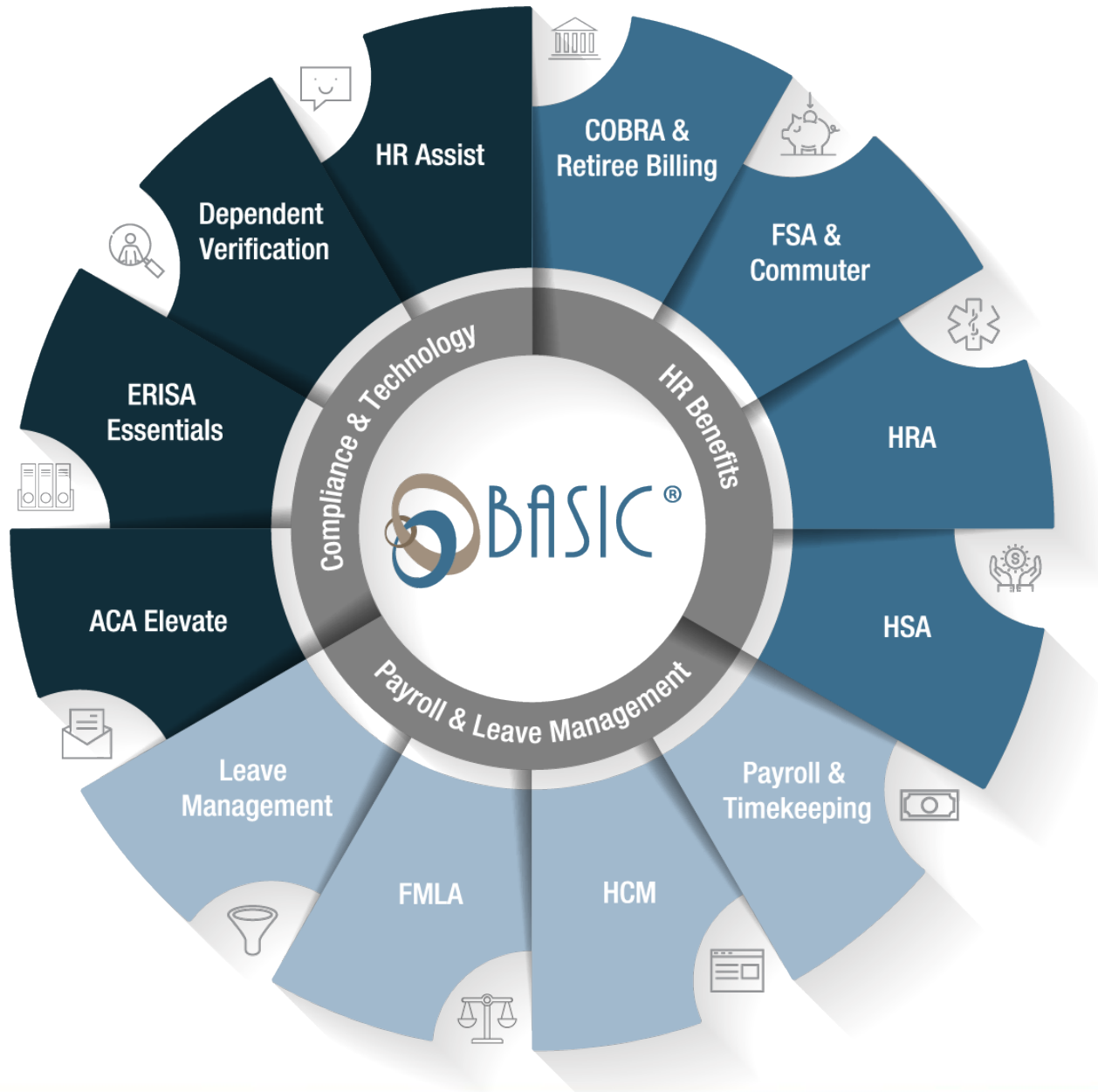
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