

Q&A

HR Legal Compliance

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Q

How do I know if COBRA applies to my company and plan?

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It is important for employers to determine whether the Consolidated Omnibus Budget Reconciliation Act (COBRA) applies to their organization. Penalties for noncompliance can include Internal Revenue Service (IRS) excise taxes and Employee Retirement Income Security Act (ERISA) statutory fines.

COBRA generally applies to group health plans maintained by employers that have 20 or more employees. This includes private-sector employers as well as state and local government employers. COBRA will apply to employers that had 20 or more employees (full- and part-time) for more than 50 percent of the typical business days in the previous calendar year. This means that the calculation will apply for the entire calendar year; it does not change if the number of employees increases or decreases. A part-time employee counts as a fraction; the employer divides the number of hours the employee worked by the number of hours required to be full-time. Therefore, it is inappropriate for an employer to assume that they don't have to offer COBRA if their staff levels decrease. Also, employers should take care to count employees of companies that are under common control.

If COBRA does apply to an employer, the next step is to figure out whether the health plan is subject to COBRA. As noted above, COBRA applies to group health plans maintained by employers. A group health plan is an arrangement established to provide medical care to employees and their families, and it can be provided in a number of ways, including through insurance or a self-funded arrangement. A key factor is whether the plan provides *medical care*.

Examples of health plans that may be subject to COBRA include:

- Medical, dental, vision and prescription drug plans
- Drug and alcohol treatment programs

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- Employee assistance plans or wellness programs that provide medical care
- On-site health care
- Health flexible spending accounts (FSAs) and health reimbursement accounts (HRAs)
- Self-funded medical reimbursement plans

The following are examples of plans that may not be subject to COBRA if they do not offer medical care:

- Long-term care plans
- Accidental death and dismemberment plans
- Group-term life insurance plans
- Long- and short-term disability plans
- Wellness programs or employee assistance programs that do not provide medical care
- Exercise or fitness centers
- On-site first aid facilities

Keep in mind—when a health plan is terminated or canceled, the COBRA obligations terminate as well. If an employer terminates one plan, but continues to provide any group health plan, the obligation to provide COBRA coverage remains. Determining COBRA obligations in this type of situation can be especially complex when there is a business merger or acquisition involved.