

Which Plans Must Comply with COBRA?

COBRA is a federal law requiring certain employer group health plans to provide employees and their dependents with the opportunity to purchase continued coverage upon the loss of coverage due to certain qualifying events, such as termination of employment, divorce, or a child reaching age 26.

Are there any employer group health plans not subject to COBRA?

Yes. Generally, the group health plans of all employers are subject to COBRA, but there are certain exceptions:

- **Governmental Plans.** Group health plans sponsored by state and local governments are not subject to COBRA. However, they are subject to very similar requirements under the Public Health Service Act.
- **Church Plans.** Group health plans sponsored by churches, or a convention or association of churches, are exempt from COBRA. However, some church plans voluntarily offer COBRA or continued coverage similar to COBRA.
- **Small Employers.** Group health plans sponsored by small employers are not subject to COBRA. Small employer status is determined on a calendar year basis. For this purpose, a “small employer” employs fewer than 20 employees on a typical business day during the preceding calendar year. There are detailed rules to help small employers determine whether they qualify for the exception.

Which benefits are considered group health plans for COBRA purposes?

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Consolidated Omnibus Budget Reconciliation Act - A landmark federal law passed by Congress in 1986 that provides continuing coverage of group health benefits to employees and their families upon the occurrence of certain qualifying events where such coverage would otherwise be terminated.

If an employer is subject to COBRA, its medical, prescription drug, dental and vision plans are considered group health plans for COBRA purposes. In addition, there may be other benefits which may be considered group health plans for COBRA purposes.

- **HSAs.** Health savings accounts (HSAs) are generally not considered to be group health plans subject to COBRA. However, the qualified high deductible health plan (HDHP) offered in connection with the HSA is subject to COBRA.
- **HRAs.** Health reimbursement arrangements (HRAs) and other self-funded medical reimbursement plans are considered group health plans for COBRA purposes.
- **Medical FSAs.** Medical flexible spending accounts (FSAs) are also group health plans under COBRA. However, if an employee terminates employment, COBRA generally must only be offered to the employee if the employee has an unused FSA balance upon termination and in that circumstance, COBRA must only be offered for the balance of the current plan year (rather than for 18 months).

- **Retiree Health Plans.** COBRA generally isn't required to be offered to a retiree in a retiree health plan (except in the event of the employer's bankruptcy). However, if a spouse or dependent child loses eligibility under a retiree health benefit due to a qualifying event such as divorce or the child reaching age 26, COBRA applies.
- **On-site Medical Clinics.** If an employer maintains an on-site medical clinic, it is generally considered to be a group health plan for COBRA purposes. The only exception to this general rule is if the employer's on-site medical clinic only delivers very limited benefits such as first aid. One of the challenges here is that if COBRA applies, the employer may not want to allow a former employee to be able to come to the employer's workplace to access the clinic.
- **Cancer and Other Disease Specific Insurance.** Many employers offer cancer and other disease specific insurance policies to employees. If the insurance provides medical benefits then it is considered a group health plan for COBRA purposes. However, if the insurance isn't subject to ERISA (is entirely paid for by the employee and meets the voluntary insurance exception under DOL regulations) then COBRA does not apply.
- **EAPs.** Employee assistance plans (EAPs) which provide even a limited number of counseling sessions (such as three) are considered to be a group health plan for COBRA purposes. Offering COBRA in connection with an EAP may be challenging due to the low cost (difficulty in establishing a COBRA rate) and also, because many of the employer's employees may be eligible for the EAP but are not eligible for or enrolled in any other employer health benefits.
- **Wellness.** If a wellness program provides medical care such as health screenings, biometric tests, health risk assessments, or physical exams, then it is a group health plan for COBRA purposes. If a wellness plan is part of the employer's group health plan and is only offered to employees and their family members who are enrolled in the plan then the wellness program can be bundled with the employer's group health plan for COBRA purposes. However, if the wellness plan is stand alone and is offered to all employees regardless of whether they are enrolled in the employer's group health plan, administering COBRA in this latter circumstance will be more challenging.



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