

## FREQUENTLY ASKED QUESTIONS

- **Q: Are all employers subject to COBRA ?**
- **A:** No. Federal, state and local governments, churches, conventions and associations of churches are exempt.
- **Q: Are any employers too small to be subject to COBRA?**
- **A:** Yes, some are. Exempt employers are those that normally employ fewer than 20 employees on a "typical business day".
- **Q: What employees are covered under COBRA?**
- **A:** A covered employee is any individual who has, or had, coverage under a group health plan subject to COBRA.
- **Q: Are Cafeteria plans covered under COBRA?**
- **A:** Yes. If any option under a cafeteria plan, standing alone, would meet COBRA's definition of a covered group health plan. For example, health care FSAs, group medical coverage options, dental options, and prescription drug options.
- **Q: Must the plan notify employees and spouses of the existence of COBRA continuation rights before a qualifying event occurs?**
- **A:** Yes. The group health plan must notify all covered employees and spouses of their COBRA rights when the plan first comes under COBRA or when employees and spouses first become eligible to participate in the plan.
- **Q: What happens if the plan administrator fails to make required notices?**
- **A:** There are substantial excise tax liability and ERISA penalties.



### LEON E. WERTZ & ASSOCIATES, INC.

#### Shreveport

2020 East 70th Street  
Suite 100  
Shreveport, LA 71105  
318-797-2554  
800-467-8934  
318-798-3206 (Fax)  
werntz@werntz.com

#### Tulsa

5157 East 51st Street  
Tulsa, OK 74135  
918-663-4224  
918-622-6907 (Fax)  
tulsa@werntz.com

#### Texarkana

P.O. Box 6203  
Texarkana, TX 75503-6203  
870-330-0559  
318-798-3206 (Fax)  
charrell@werntz.com

Visit us on the web @  
[www.werntz.com](http://www.werntz.com)



LEON E. WERTZ & ASSOCIATES, INC.

## COBRA COMPLIANCE

ADMINISTRATORS &  
CONSULTANTS FOR  
EMPLOYEE BENEFIT PLANS



# COPING WITH THE REGULATIONS

## WHAT IS COBRA?

Congress enacted COBRA in 1985 to provide access to affordable health insurance when an employee loses a job, is laid off, retires, or when a person receiving health coverage under a spouse's plan divorces or is widowed. The employer must permit "qualified beneficiaries" to elect to continue their health insurance under the plan for 18, 29, or 36 months, depending on the "qualifying event". The employee may be required to pay for the coverage, but the employer may not charge more than 102% of the plan's cost.

**COBRA Subsidy Alert**—On February 17, 2009 the American recovery and Reinvestment Act (ARRA) was signed which has a significant impact on existing COBRA rules and regulations. The ARRA legislation provides for a government Subsidy of 65% of COBRA premiums for Assistance Eligible Individuals (AEIs).

## LENGTH OF COVERAGE

- ◆ **18 Months** — Qualified beneficiaries who terminate with the employer, or have a reduction in hours.
- ◆ **29 Months** — Qualified beneficiaries who are disabled within 60 days of the COBRA coverage.
- ◆ **36 Months** — Qualified beneficiaries who have a

## WHAT ARE QUALIFYING EVENTS?

- ◆ The death of a covered employee.
- ◆ Termination of a covered employee's employment for any reason other than gross misconduct.
- ◆ Reduction in the number of hours a covered employee is employed.
- ◆ Divorce or separation of a covered employee and his or her spouse.
- ◆ Medicare entitlement of a covered employee.
- ◆ A child of the covered employee ceasing to meet the group health plan's definition of a dependent child.
- ◆ Commencement of a bankruptcy proceeding concerning an employer from whose employment the covered employee retired.
- ◆ Complete and total disability if the disability causes the loss of medical benefits.
- ◆ Failure to return from a FMLA leave.

## NOTIFICATIONS

**Initial.** The group health plan must notify all covered employees and spouses of their COBRA rights when the plan first comes under COBRA or when employees and spouses first become eligible to participate in the plan.

**FMLA.** A leave of absence under FMLA is not a COBRA qualifying event, but an employee's failure to return from a FMLA leave requires a notice.

**Qualifying Events.** The plan is required to provide a notice in the event of the death, termination, divorce, reduction in hours, entitlement to Medicare of a covered employee. Also, the bankruptcy of the employer and a child ceasing to meet group health eligibility rules will trigger a required notice.

## PENALTIES

The excise tax is \$100 per day per qualified beneficiary for the duration of the noncompliance period, with a maximum of \$200 per day per family, regardless of the number of qualified beneficiaries. Some courts have held employers liable for insurance claims when notices were not made on a timely basis.

## HOW MUCH DOES IT COST?

Administrative costs for required notices, premium collection, and other COBRA related services are billed on a fee for service basis. The internal cost of payroll deductions and other tasks to generate information are also costs of COBRA compliance. Our staff is trained to help minimize the effort required to maintain compliance of your health benefit programs. The cost of noncompliance, however, can be devastating to an employer.