

COBRA

A Helpful Guide to Counting Your Way to Compliance



Who is subject to COBRA?

- *Employers with the equivalent of 20 or more full-time employees on 50% or more of typical business days in the **prior calendar year**.*
 - *Counting is always done on a calendar year basis, never a plan year basis.*
 - *A full-time employee is defined as an individual working 40 hours per week.*
- *Church plans are exempt from COBRA.*

What employees are counted, and how?

Count:

- *The immediate employer, as well as all other entities under common control, will be considered a single employer under COBRA. Foreign entities are included for purposes of coverage testing.*
- *All common-law employees are counted, regardless of whether or not the employee is covered under the health plan.*

Don't Count:

- *Self-employed, independent contractors or directors (in the case of a corporation).*

How to Count:

- An employer uses 40 hours per week as a benchmark for one full-time employee.
- Part-time employees are counted as a fraction of a full-time employee. The fraction is equal to the number of hours that a part-time employee works divided by the number of hours that a full-time employee must work for such status.
 - This calculation can be made using the number of hours worked per pay period, per week or per year. The same method should be used for all employees for the entire year.

Helpful Hint: Employers can use the Unemployment Quarterly Tax Return for counting purposes

Example:

EE	Hours/Week	FTE
Joe	40	1
Bob	20	1/2
Sue	15	3/8
Tina	40	1
Jill	10	1/4
Adam	35	7/8
FTE Total:		4

What happens when the number of employees goes above 20?

- When a small employer reaches the COBRA threshold due to an increase in workforce during the **current calendar year**, then the group health plan becomes subject to COBRA as of the **following January 1**.

In the scenario above:

- A beneficiary who experiences a COBRA-qualifying event during the current calendar year is not entitled to continuation of benefits because the plan is not subject to COBRA.
- However, a qualified beneficiary who experiences a COBRA-qualifying event in the following year will be entitled to COBRA benefits.

Employer Action Items Upon Reaching COBRA Threshold:

- *Notify insurance carrier and your broker that your health plan will be subject to COBRA effective January 1.*
 - *Summary Plan Description (SPD), plan document, and Summary of Benefits and Coverage (SBC) must now reflect COBRA.*
- *Choose the appropriate third-party COBRA administrator.*

What happens when the number of employees falls below 20?

- *When an employer falls below the COBRA threshold for half or more of the **current calendar year**, then the health plan will not be subject to COBRA as of the **following January 1**.*

In the scenario above:

- *If a qualified beneficiary experiences a COBRA qualifying event during a year in which the plan is subject to COBRA, then the qualified beneficiary will remain entitled to continuation coverage for the remainder of the maximum COBRA coverage period (18, 29 or 36 months), even if the plan is no longer subject to COBRA in the next year.*

Employer Action Items Upon Falling Below COBRA Threshold:

- *The employer or plan administrator should notify active employees and covered spouses in writing that there will be no COBRA coverage for qualifying events in the upcoming calendar year.*
- *Notify your carrier and broker of COBRA status change.*
 - *The SPD, plan document, and SBC should be amended to reflect that COBRA does not apply. Employers whose workforce hovers around the 20-employee threshold may want to add language to their initial COBRA notice and other employee communications stating that COBRA entitlement may change.*

Penalties for Non-Compliance

- *An employer who misrepresents that COBRA coverage is available may then have to provide for coverage even if the COBRA offering was in error.*

- *The Department of Labor and qualified beneficiaries can sue employers that don't comply with COBRA notice requirements.*
 - *Employers can be fined up to \$110 day for each employee, spouse, and dependent*

- *The IRS can assess employers non-deductible excise taxes of \$100 per day for each employee, spouse and dependent for failure to comply with COBRA requirements.*
 - *Tax penalties are capped at \$200 per day for each affected family.*
 - *Employer's liability for tax penalties is limited to the lesser of \$500,000 or 10 percent of the preceding year's total costs of providing group health coverage.*

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