

COBRA Compliance Checklist



This COBRA Compliance Checklist can be used as a tool to do a quick assessment of some key aspects of federal COBRA compliance and help you identify gaps in compliance. This is not an all-inclusive list but covers the more common deficiencies and areas that are often overlooked.

Does your company sponsor group health plans that are subject to COBRA and does your company have 20 or more employees? A group health plan includes plans such as major medical, dental, vision, Health Care flexible spending account (FSA), Health Reimbursement Arrangement (HRA), and some employee assistance and wellness plans.

- Yes. Your company is obligated to comply with various COBRA obligations. The remaining questions address some key COBRA obligations.
- No. There are no COBRA obligations. However, various states impose COBRA-like continuation requirements, so be sure to consult with your company's legal counsel about applicable state law.

Does your company include an offer of COBRA for all its COBRA-eligible group health plans?

- Have you included your group health plans, such as your medical, dental, vision plans (even if they are 100% employee paid)?
- Have you included your Health Care FSA?
- Have you included your Health Reimbursement Arrangement?
- Have you included any wellness plans or employee assistance plans subject to COBRA?
- Have you included your on-site medical clinic if it provides for certain care?

- Yes. Your company has met an important COBRA compliance obligation.
- No. Failure to meet COBRA obligations can result in significant penalties and legal fees. COBRA litigation is on the rise, so we recommend you confirm that your company has proper processes and procedures in place and/or has engaged a trusted COBRA administrator.

Does your company provide all the required accurate COBRA-compliant notices to plan participants and qualified beneficiaries (QB) regarding their COBRA rights timely?

- Yes. Your company has met an important COBRA obligation.
- No. Failure to provide all the required accurate COBRA-compliant notices to plan participants and QBs can result in significant penalties, legal fees, and liability for medical expenses not covered by insurance if the carrier will not reinstate coverage for elections made as a result of an incomplete or late notice. A trusted COBRA administrator can help your company maintain compliance by providing COBRA notices to plan participants when required.

Does your company's HR department know when it is required to offer COBRA to an employee and/or their spouse and dependents? Qualifying events that trigger a loss of coverage and an offer of COBRA include:

- Termination of employment (voluntary or involuntary).
- Reduction in hours that results in loss of eligibility.
- Death of employee.
- Divorce.
- Loss of dependent eligibility.
- Medicare entitlement, but only in the rare circumstance where it causes loss of eligibility.

- Yes. Your company has met an important COBRA obligation.
- No. Failure to offer COBRA timely when there is a triggering event to all the appropriate individuals can result in significant penalties and legal fees.

Does your company offer COBRA to all individuals who are entitled to COBRA?

- Yes. Your company has met an important COBRA obligation.
- No. Failure to offer COBRA timely to all QBs when there has been a triggering event can result in significant penalties and legal fees.

Are you clear on how your Health Care FSA's rollover or grace period impacts HSA eligibility, if applicable?

- Employee goes on non-FMLA leave of absence.
 - Employee and/or their spouse or dependents is eligible for or enrolled in Medicare.
 - Employee retires and is offered retiree coverage.
- Yes. Your company has met an important COBRA obligation.
 - No. Failure to have clear procedures in place for these situations can lead to disputes over coverage with plan participants and/or insurance carriers, and can in extreme situations lead to litigation, potential self-insurance, and possibly civil penalties and/or excise taxes imposed by the government.

Does your company offer COBRA for the correct maximum COBRA coverage periods, including proper application of coverage period extensions or early termination of coverage?

- Coverage can be extended in case of a QB being disabled.
 - Coverage can be extended for a spouse and/or dependent in the case of a second qualifying event (divorce, death, loss of dependent status, Medicare entitlement prior to electing COBRA).
 - Coverage can be extended for someone dropped in anticipation of a divorce.
 - Coverage should end early when QB in disability extension is determined to not be disabled.
 - Coverage should end early if a QB becomes enrolled in another group health plan.
 - Coverage should end early if a QB becomes entitled to Medicare after electing COBRA.
- Yes. Your company has met an important COBRA obligation.
 - No. Failure to offer COBRA for the right amount of time can result in litigation or a DOL investigation. Offering COBRA for more than the required maximum coverage period may result in self-insuring the additional time that exceeds the maximum coverage timeframe.

Does your company have a tracking system to manage the offers of COBRA and payment deadlines and maintain all supporting documentation?

- Yes. You have met an important COBRA obligation.
- No. It is essential to correctly manage offers of COBRA, administer payment deadlines, and maintain all supporting documentation. Failure to do so can result in litigation, a DOL audit, coverage disputes with participants, and/or coverage disputes with insurance carriers. Failure to maintain COBRA records will limit your ability to defend against an audit or litigation.

Does your company provide open enrollment information to individuals enrolled in COBRA and individuals in their COBRA election period?

- Yes. Your company has met an important COBRA obligation.
- No. Failure to treat individuals enrolled or eligible to enroll in COBRA the same as active employees may result in lawsuits, potential self-insuring, and possibly civil penalties and/or excise taxes imposed by the government.

Need Assistance?

If you answered no to any of the questions above, we're here to help. EBC is a trusted third party administrator of employee benefit plans with a team of in-house compliance experts who work to apply their skills and knowledge to your specific situation. At EBC, we know one size does not fit all and we're dedicated to collaborating with you to understand your needs and implementing solutions that will best serve the needs of your employees. Let us help meet your compliance needs! Contact us to start a conversation or if you have any questions.

*The compliance checklist created by Employee Benefits Corporation is for general information purposes only. This does not constitute legal or tax advice and may not be relied upon by anyone as such. Nor may the information be disseminated in any form. You should contact your own legal advisor about your specific situation.

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