

COMPLIANCE SNAPSHOT

COBRA: Covered Employer Plans

The [Consolidated Omnibus Budget Reconciliation Act \(COBRA\)](#) requires employers covered by the law to provide eligible employees with the right to continue group health coverage for limited periods of time under certain circumstances, such as a job loss, reduction in hours worked, death, divorce and other life events (collectively, these are known as qualifying events).

Covered Employers

COBRA generally applies to all private sector group health plans maintained by employers that had **20 or more employees** on more than 50% of their typical business days in the previous calendar year. This includes corporations, partnerships and tax-exempt organizations. COBRA also applies to plans sponsored by state and local governments.

Small Employer Exception

A group health plan is not subject to COBRA for a calendar year if the employer maintaining the plan normally employed **fewer than 20 employees** during the prior calendar year. Small employer plans are not subject to COBRA for the entire calendar year for which they qualify for this exception. COBRA also does not apply to group health plans maintained by churches. However, small employer plans may be required to provide continuation coverage under state insurance law (known as mini-COBRA laws).

Determining the 20-employee Threshold

In counting employees, employers must include:

- ☑ All common-law employees, not just plan participants;
- ☑ Full-time and part-time common-law employees (although a part-time employee counts as a fraction of a full-time employee, equal to the number of hours the part-time employee works divided by the number of hours an employee must work to be considered full-time); and
- ☑ Common-law employees working outside of the United States.

Medical Care

- Plans that do not provide medical care are not subject to COBRA.
- “Medical care” broadly includes medical, dental, vision and drug coverage.
- Employers must generally offer COBRA for health reimbursement accounts (HRAs), and under a health flexible spending account (FSA) unless an exception applies.
- Life insurance and disability benefits are not considered “medical care.”

Related Employers

- ☑ All employees of employers that are under common control must be counted.
- ☑ Thus, if an employer is part of a controlled group or affiliated service group (as determined under Code Sections 414(b), (c), (m) or (o)), all employees of the related group must be taken into account.

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