

Is Your Company Required to Offer COBRA Continuation Group Health Coverage to Employees? The Rules Have Changed.

By Attorney Patricia F. Claire

Like many employers, it may be years since you have looked at the issue of whether or not your company is required to offer COBRA continuation group health coverage. Now is the time to look at this issue again. Because of new Federal rules, there is a new formula for employers to use in determining if their group health plan must offer COBRA coverage.

For many years, Federal law has required that the group health plan of any employer of twenty (20) or more employees must offer COBRA coverage to qualified employees, spouses and dependents when a “qualifying event” occurs, such as termination of employment or divorce. (Note: all members of a controlled group are considered to be one employer.) Small group health plans are an exception to the COBRA requirements.

There are stiff penalties for failure to comply with the COBRA regulations. It is important for employers that are near the twenty (20) employee count to decide each year if their plan comes under the COBRA rules.

Employers with part-time employees, an increasing number of employers these days, are especially affected by the new rules. However, other employers also may be affected. Here’s the new way to do the nose-count, although the count continues to be based on the preceding calendar year.

First of all, the definition of the people who have to be counted has changed. Now only common law employees have to be counted. Self-employed persons, corporate directors, and independent contractors covered by an employer’s group health plan no longer have to be counted in determining whether the employer’s plan must offer COBRA coverage. (These people still might qualify for COBRA coverage.)

Second, while part-time employees still have to be counted, they now only have to count for a fraction of a full-time employee. Each full-time worker counts as one employee. The part-time hours worked are treated as a fraction of the hours required to be full-time. Note: the rules do not permit more than eight (8) hours a day/forty (40) hours a week to be the regularly required full-time schedule.

Example: An employee routinely working a twenty (20) hour week, when the employer requires forty (40) hours to be full-time, now would count as half (0.5) of an employee. If all the employees are half-time, and the employer has twenty (20) such employees, previously that employer's plan would have been required to offer COBRA coverage. Now their part-timers would total only ten (10) employees, and that plan would not have to offer COBRA. However, the COBRA requirements would still apply to any qualifying events occurring while the plan had been subject to COBRA.

Finally, the employer is considered to have normally employed fewer than twenty (20) employees during a calendar year if it has fewer than twenty (20) employees on at least fifty percent (50%) of its typical business days during that year. The employer may count employees, and part-time hours worked, for each typical business day in the preceding calendar year. Or, the employer may count employees, and part-time hours worked, for each pay period and attribute the total number of employees and part-time hours worked, for that pay period to each typical business day falling within that pay period. Whichever method is chosen must be used consistently for all employees and for the entire year.

This is a simplified review of the effect of these new rules. The actual regulatory language and interpretations should be consulted in light of the specific facts of each employer's business.

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