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COBRA: Not Always A Snake In The Grass For Employers

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COBRA stands for the Consolidated Omnibus Budget Reconciliation Act of 1985. It is a federal law requiring employers to allow employees (and their covered dependents) who leave their employment, to remain on the employer health plan for a limited time. COBRA generally provides continuation of health insurance for eighteen (18) months, but in some circumstances benefits can last up to thirty-six (36) months. COBRA rules apply to employers with twenty (20) or more employees who offer healthcare benefits to their employees. Once an employee elects the extended healthcare coverage, an employer is not required to pay the cost of COBRA premiums.

COBRA benefits can only be provided to qualified beneficiaries, those who are covered under an employer's group health plan on the day before a qualifying event causes the loss of coverage. Qualified beneficiaries typically include employees, both full-time and part-time; spouses; dependents of employees; and retirees, unless they are eligible for Medicare. Employees who decline participation in the employer health group health plan are not qualified beneficiaries. Moreover, an employer does not have to provide COBRA to an employee who commits gross misconduct. However, an employer may wind up in federal court if it challenges an employee's entitlement to COBRA, and this could prove extremely time consuming and expensive.

COBRA is triggered by the occurrence of a "qualifying event." So, whenever an employee leaves employment, through termination or resignation, COBRA applies. COBRA also applies when an employee's hours are reduced so that the employee is no longer covered under the terms of the health plan. In addition, change in the status of an employee's spouse, such as divorce from an employee, which leaves the spouse without health insurance is considered a qualifying event. COBRA is also triggered when an employee's child reaches an age that no longer qualifies that child to be under the parent's health plan. And if an employee on leave loses health benefits, COBRA applies.

COBRA is extremely valuable to an employee because the cost of health insurance is so high, and in the event of wrongful termination claims, access to COBRA coverage can be helpful in settling the claim. Offering paid COBRA as part of a settlement offer is often very attractive to an employee because not having to worry about paying health insurance takes a huge burden off an employee who is out of work, concerned about making ends meet, and providing for his/her family. Offering to pay COBRA, in lieu of a cash settlement to the claimant employee, also benefits the employer because there are no taxes on COBRA payments. This applies whether the employer pays the COBRA benefits directly to the employee or provides a lump sum of money to the employee which is dedicated to pay for COBRA. Note, however, it is recommended that the employer pay the COBRA benefits directly to avoid any IRS challenges as to whether the lump sum was actually used to pay for COBRA, in which case, the employer will then have to obtain proof of how the lump sum was disbursed. Any inability to show that the lump sum payment was used to pay for COBRA benefits could result in the employer having to pay taxes on the lump sum that was intended for COBRA payments.

TAKEAWAY: COBRA can help an employer settle employee claims.

Attorney

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