

# Cut Through the Compliance Ignorance: Benefit Admin Rules Made Simple

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# Introductions



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# Agenda

- Why health & welfare benefits compliance?
- Who does health & welfare benefits compliance impact?
- How does non-compliance impact employers, consumers, others?
- What are some best practices I can help my clients with to stay compliant?



Compliance

Standards

Guidelines

Review

Laws

Codes

Audit

Procedure





# Why is Health & Welfare Compliance Important?

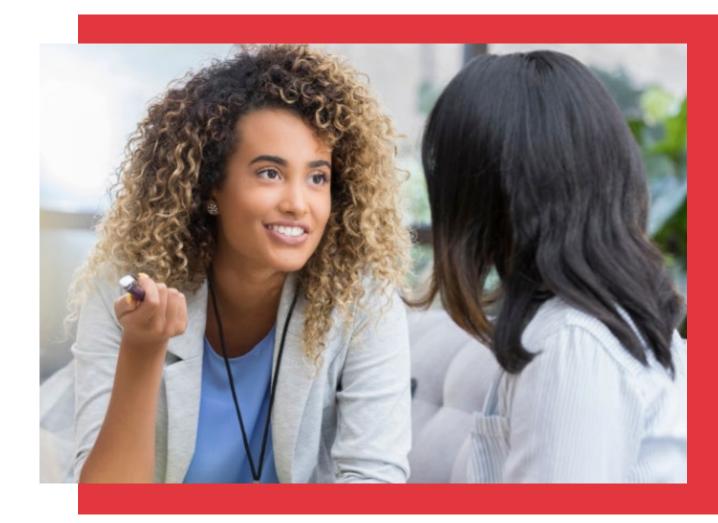






# **Compliance Overview**

- What is included in Benefits Compliance and who is impacted?
- Includes both State and Federal Laws as well as Contractual Agreements
- Laws are directed at compliance for various individuals
  - Employers
  - Employees
  - Agents
  - Advisors
  - Organizations/Companies









# **Compliance Consequences**

Failure to comply with state and federal laws can cause the following:

- Penalties
- Lawsuits
- Audits
- Government enforcement
- Impact to claims payment
- Impact to tax advantaged benefits
- Criminal charges





# Who Is Impacted?

- Clients
  - Fines, penalties, lawsuits and more
- Benefit Plans
  - Certain plans can be found out of compliance and tax advantages removed
- Participants
  - Participants may have issues related to eligibility for benefits
  - Participants may have tax consequences

- Carriers
  - Fines, penalties, lawsuits (Example: HIPAA- Anthem)
- "Covered Entities" (HIPAA)
  - Penalties, lawsuits
- Business Associates
  - Penalties, lawsuits
- Agents
  - E & O Claims, lawsuits
  - Issues with failure to disclose









# Employee Retirement Income Security Act

- Passed in 1974
- Governs both retirement and health and welfare benefit plans
- Numerous laws since 1974 have included various amendments to ERISA
- ERISA applies to private-sector employers
- Church plans are exempt







# Cafeteria Plans or POP Plans...Section 125 Plans

- Enacted in 1978
- Allows employees to choose from taxable and non-taxable benefits
- Has been amended numerous times
- Allows for premium conversion or pre-taxing of employee contribution to certain qualified premiums
- Restrictions on changes during plan year apply without qualifying event
- Certain individuals are ineligible to participate in any portion of a Section 125 plan



# Consolidated Omnibus Budget Reconciliation Act

- Enacted in 1986
- Includes requirements for portability of certain health and welfare benefits
- Most of the compliance failures related to COBRA center around various failures to notify of rights or failure to offer COBRA
- Applies to private sector employers
- Church Plans are exempt



#### COBRA

Including the Health Insurance Portability and Accountability Act of 1996

This Facts Sheet is intended to provide answers to questions about our workplace. Please read it carefully and keep it in a safe place for future reference. If you have further questions, contact your immediate supervisor or the human resources department.

#### What is COBRA?

Most health insurance in the United States is provided through employers. Because of this, special problems arise in the area of insurance coverage when a person either loses a job or changes jobs. Recognizing these problems, the federal government made significant changes in group health coverage for employees with the passage of the health benefit provision in the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985.

Under what is commonly referred to as COBRA continuation coverage (COBRA coverage), terminated employees or those who lose coverage because of reduced work hours or through a change in family status (including divorce, legal separation, death of spouse or loss of dependent status) may be able to buy group coverage for themselves and their families for limited periods of time.

The law generally covers group health plans maintained by employers with 20 or more employees in the previous year. It applies to plans in the private sector. A similar form of coverage is provided to employees of state and local governments under the Public Health Service Act (PHSA). COBRA laws do not apply to life insurance or plans sponsored by the federal government and certain church-related organizations.

# Are there alternatives for health coverage other than COBRA?

If you become entitled to elect COBRA continuation coverage when you otherwise would lose group health coverage under a group health plan, you should consider all options you may have to get other health coverage before you make your decision.

One coverage option is the new health insurance marketplace (Marketplace). The Marketplace offers health insurance that includes comprehensive coverage, from doctors and medications to hospital visits. Qualified health plans in the Marketplace present their price and benefit information in simple terms so that you can make apples-to-apples comparisons. For more information, visit healthcare.gov.

#### What is a group health plan under COBRA?

Under COBRA, a group health plan (plan) is one that provides medical benefits for the employer's own employees and their dependents through insurance or another method such as a trust, health maintenance organization, self-funded pay-as-you-go basis, reimbursement or a combination of these. Medical benefits provided under the terms of the plan and available to COBRA beneficiaries may include:

- Inpatient and outpatient hospital care
- Physician care
- · Surgery and other major medical benefits
- Prescription drugs
- Any other health benefits, such as dental and vision care

#### Who is entitled to benefits?

There are three elements to qualifying for COBRA benefits:

#### Your group health plan must be covered under COBRA.

Group health plans for employers with 20 or more employees on more than 50 percent of the working days in the previous calendar year are subject to COBRA.

The term "employee" includes all full-time and part-time employees (however, a part-time employee is counted as a fraction of a full-time employee).

#### 2. You must be a qualified beneficiary.

A qualified beneficiary is any individual covered by a group health plan on the day before a qualifying event (see #3 below). A qualified beneficiary can be an employee, the employee's spouse and dependent children, and in certain cases, a retired employee, the retired employee's spouse and dependent children.

#### You must experience a qualifying event. To activate COBRA continuation

coverage, a qualifying event must occur that results in the loss of health coverage during the initial COBRA continuation coverage period.

A qualifying event will occur for any of the following reasons:

- termination of employment (for reasons other than gross misconduct);
- reduction in working hours (such as strike, lavoff or leave of absence);
- · a divorce or legal separation;
- the death of a covered employee;
- a dependent is losing dependent status under the terms of the group health plan;
- loss of coverage due to Medicare entitlement.

#### Your rights and responsibilities

#### Notices

Your employer should furnish an initial general notice to covered employees, their spouses and newly eligible employees. This notice generally will describe your rights under COBRA, including applicable provisions of the law.

When a qualifying event occurs, the plan administrator will provide notice of their rights under COBRA to qualified beneficiaries within 14 days of the qualifying event.





## Family Medical Leave Act

#### Passed in 1993

- Allows for up to 12 weeks of job protected un-paid leave, and benefit continuation for eligible employers
- Includes notification and leave administration requirements
- Employers are strictly forbidden to prevent, interfere with or retaliate against employees for taking FMLA leave
- Managers and supervisors can be held personally liable for FMLA failures
- Often there is an intersection with other Federal mandates that can further complicate matters
- FMLA applies to both private and public sector employers







#### Affordable Care Act

- Passed in 2010
- Implemented in stages over the last 8 years
- Impacts employers, employees, insurance companies, health care providers and medical device manufacturers and more
- Complexity of the law makes compliance difficult







# How Does Benefits Compliance Impact Different Companies?







# Which Companies Are Impacted?

#### (1-19) Employees:

**ERISA Compliance** 

Private Sector

State Continuation

\*Varies by state

1094/1095 Reporting

 Self-Insured Medical Only

Section 125 Plan

 Pre-taxing Premiums

#### **(20-49) Employees:**

**ERISA Compliance** 

Private Sector

**COBRA Continuation** 

1094/1095 Reporting

 Self-Insured Medical Only

Section 125 Plan

 Pre-taxing Premiums





# Which Companies Are Impacted?

#### **(50-99) Employees:**

**ERISA Compliance** 

Private Sector

**COBRA Continuation** 

1094/1095 Reporting

Section 125 Plan

 Pre-taxing Premiums

FMLA Administration

- Public and
- Private Sector

#### (100+) Employees:

**ERISA Compliance** 

Private Sector

**COBRA Continuation** 

1094/1095 Reporting

Section 125 Plan

 Pre-taxing Premiums

FMLA Administration

 Public and Private Sector



# What Are The Most Common Mistakes?







## **Top 3 ACA Non-Compliance Areas**

- The ACA required certain employers (ALE's) to offer coverage that meets certain standards and is affordable or face a penalty
- Meet MEC standards
  - Minimum Essential Coverage
- Meet MV standards
  - Minimum value
- Meet Affordability Standards



#2
Failure to distribute required notices

## **Top 3 ACA Non-Compliance Areas**

- Marketplace/Exchange Model Notice
- Grandfathered Plan Notice
- Summary of Benefits and Coverages (uniform notice)
- Revised COBRA Notice





# **Top 3 ACA Non-Compliance Areas**

#### **ACA 1094/1095 B or C reporting**

- The "B" Reporting is completed by "providers of coverage"
  - self-funded employer (2-49) **or** an insurance carrier
- The "C" Reporting is completed ALE's with 50 or more FTE's
  - Both fully-insured and self-insured employers
- ALE's must report, even if they are offering no coverage to their employees
- ALE's must report, even if they are on a fully-insured health plan and the carrier is handling the "B" reporting
- Steep penalties apply for employers failing to report
- This is in addition to any penalty for failure to offer coverage



# #1 Failure to maintain an ERISA plan document/ summary plan description

#### Top 4 ERISA Non-Compliance Areas

- Applies to private sector employers (for profit and non-profit) that are subject to ERISA
- Must maintain the required ERISA plan document and summary plan description
- This document is NOT provided to the employer by the insurance carrier (exception for some selffunded plans) and must be created with all required information
- The ERISA SPD impacts ACA compliance, COBRA compliance, FMLA compliance and even claims payment



# #2 Failure to distribute the required Summary Plan Description or respond to requests for SPD

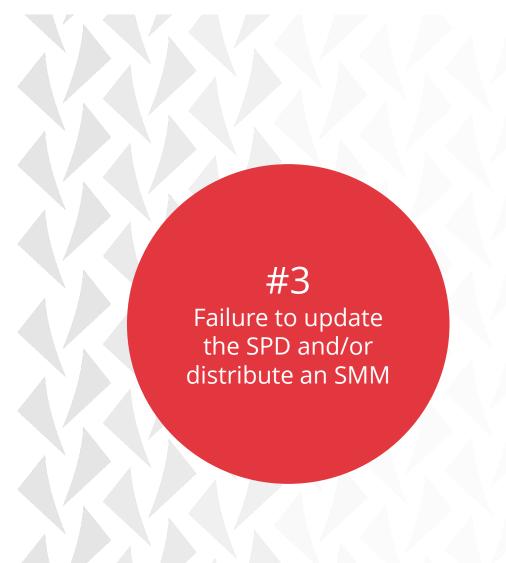
#### Top 4 ERISA Non-Compliance Areas

- Having the document is not enough, the employer must distribute according to ERISA requirements
- Employers must provide a copy of the SPD when requested by:
  - The DOL
  - A participant
  - Outside party that has authorization to request

#### Within 30 days of the request

- Employers must follow DOL requirements for distribution
- Employers cannot charge for paper copies of these documents





#### Top 4 ERISA Non-Compliance Areas

- Summary of Material Modifications (SMM) must be provided for changes to the plan
- May choose to update plan doc/SPD
- When providing SMM's for updates, plan doc/SPD must be updated completely every 5 years







#### Top 4 ERISA Non-Compliance Areas

- Employers with 100+ EE's enrolled in benefits must file
- Provide a Summary Annual Report (SAR)
- Employers that have failed to file may owe penalties
- Relief may be available from some penalties through the DOL's **Delinquent Voluntary Filer Correction** program



#1
Failure to provide
General Initial
Rights Notice

GIN notices must be supplied to all QB's coming on to the benefit plan that is subject to COBRA

#2
Failure to provide required
Qualifying Event or Secondary
Event Notices

QE notification must be provided to all QB's for any qualifying or secondary event, within the COBRA timeline



#3
Failure to offer
COBRA to all who
are eligible

- EE's and
   Dependents
   enrolled in
   COBRA eligible
   benefits
- Dependents
  covered on the
  plan the day
  before the
  qualifying
  event occurred

#4
Failure to offer COBRA for the right benefits

COBRA dictates which benefits are subject, not the employer

- Medical & RX
- Dental
- Vision
- HRA & FSA

Special rules apply



#5
Failure to follow
COBRA
timelines

COBRA defines timelines for:

- Notices
- Election
- Payment
- Termination
- Maximum duration

#6
Failure to
maintain proper
records for COBRA
administration

COBRA records maintained:

- All notices distribution
- All communications with qualified beneficiaries
- All evidence of payment
- COBRA records may be requested in a DOL audit for ERISA



#7
Failure to stay
within the COBRA
guidelines

- Staying within the COBRA guidelines is safest
  - Timelines
  - Eligibility
  - Notifications
- Failure to do so may impact claims payments and other factors
- Carriers may deny claims for ineligible individuals



# **Top 5 Areas of Non-Compliance for FMLA**

#1
Adverse action
against an
employee
returning from
leave, must return
EE to the same or
equivalent job

- Same level of pay
- Same level of benefits
- Same level of authority
- Same or similar shift/hours



# #2 Saying the wrong thing when an employee requests leave

#### **Top 5 Areas of Non-Compliance for FMLA**

- Comments that discourage taking time off
- Comments that discuss the personnel needs of the department in conjunction with the request
- Comments that question the validity of the leave requests circumstances
- Comments that seem judgmental in nature



# #3 Making assumptions about which situations qualify for leave

#### **Top 5 Areas of Non-Compliance For FMLA**

- FMLA defines conditions that are eligible for leave, NOT managers and supervisors
- All questions regarding eligible leave should be handled per P&P's and by authorized personnel as a best practice
- The employee does not dictate what an eligible condition is, once again defined by FMLA



# #4 Disclosing an employee's private medical information to unauthorized parties (Also HIPAA Violation)

#### **Top 5 Areas of Non-Compliance for FMLA**

- Protected Health Information MUST be protected!
- Disclosure to anyone that is not in a true "need to know" position could potentially be a violation
- All employees tasked with managing PHI should be trained in HIPAA requirements
- Good intentions do not absolve of guilt in a PHI violation



#### **Top 5 Areas of Non-Compliance for FMLA**

#5
Actions taken
against an
employer for
unforeseeable
leave

- Must know the difference under FMLA for unforeseeable leave versus foreseeable leave
- Make certain no-call/no-show P&P enforcement does not violate FMLA rights



# What Now, How Do I Help My Clients Stay Compliant?







# **Compliance Checklist**

#### **#1 Compliance Review**

Are my clients subject to these regulations AND are they following the rules?

ACA

FMLA

• ERISA

HIPAA

COBRA

#### #2 Document & Distribution Review

- What process do we have for reviewing document distribution requirements and how clients should address those?
- Are notices current and accurate?
- Are my clients aware of requirements for keeping records of document distribution?
- Do they have procedures for document distribution and records retention?



# Compliance Checklist

#### #3 P & P's and Training Review

- Do P & P's or handbook address required federal legislation (Ex. FMLA)?
- What about required training for the following:
  - FMLA -HIPAA/PHI

#### **#4 Reporting Review**

- Employee count matters for determining reporting for ACA 1095 C
- Did I offer plans that required PCORI fees?
- For Companies with more than 100 EE's on benefits, they must file 5500

#### **#5 Advisor /Vendor Review**

- Companies who use outside advisors/vendors to address employee benefits and/or benefits compliance should have a review process
- What P & P does my company have in place for choosing vendors?
- What type of oversight does my company have in place?







# Questions?

Whether you have a question or want to learn more, we're happy to speak with you.

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