

## BENEFITS CORNER



### Employers Take Note: COBRA and State Continuation

Many folks have taken advantage of the ability to continue health, dental, or vision insurance coverage when leaving a job through the provisions of COBRA or State Continuation laws. It can be a great thing for a former employee to be able to continue on a familiar program while they are between jobs or waiting for Medicare to start in the event of an early retirement.

Most people believe that the laws that enable this continuation of previous benefits are insurance laws—they are not. COBRA and State Continuation laws apply to the employer; insurance companies simply have to continue the coverage when properly notified by the employer.

This is where employers need to take note. The penalties for not complying with these laws will be paid by you and not the insurance company. Penalties for not complying can include a fine of up to \$100 for every day that you are found to not be in compliance. Further, if you have not properly notified a former employee of his or her continuation rights, you may be liable to pay for all of that employee's

medical bills (without a limit to your financial exposure!). There has been more than one small business owner who has lost everything because of these laws.

So what is COBRA and State Continuation? The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986 is a federal law that applies to firms with twenty or more employees on more than 50 percent of the working days in the previous calendar year. Please note that twenty employees means full or part-time and the employee does not need to be eligible for, or participate in, the benefits plan to count toward the twenty-employee figure. State continuation, also known as Colorado Continuation, is a state law that applies to any Colorado employer, regardless of size. COBRA supercedes Colorado Continuation in most instances.

In general, both of the laws allow a former employee of a firm to continue on that firm's benefit plans for a period of up to eighteen months. The employee must pay the full cost of the benefits; COBRA allows an employer to charge 102 percent of the actual cost. If the employer changes benefit plans or insurance companies, the employee on continuation makes the change as well. To be eligible for COBRA, an employee simply needed to have been on the insurance plans. State Continuation requires that the employee have been on the benefit plans for at least six months before being eligible to continue.

The largest problem area for the employer is in notifying a recently terminated employee of the right to continue on the benefit program. COBRA requires a written notification be received within fourteen days of the qualifying event, while Colorado Continuation requires the notice be received within ten days. This notice must be mailed—handing it to the employee or telling the employee of their rights is not considered proper notice.

After proper notice, it is then up to the former employee to make the election to continue in a specified time frame; up to sixty days under

COBRA and thirty days for continuation. The employer then must notify the insurance companies of the employee's decision to continue.

COBRA also has many other compliance and notification requirements. The employer is required to have written COBRA procedures, proof of training for anyone who handles COBRA questions internally, and further documentation of the program design. The employer is required to send out a "General Notification" to all employees who may become eligible to continue at some future date; it must be a separate mailing to the employee's home. These are just a few of the items a COBRA eligible employer is required to have.

Remember, COBRA and Colorado Continuation are employment laws—not insurance laws. If your company is not actively on top of this requirement, then the penalties fall to you. I have only scratched the surface of the employer's compliance requirements for both COBRA and State Continuation in this article.

I know that I have sounded a bit alarmist at times in this article. Unfortunately, I have seen too many employers make the assumption that COBRA and Colorado Continuation are insurance law and, therefore, not their responsibility. Please do not make that mistake if you are an employer or the person who handles the benefits for your firm.

If you would like assistance in reviewing your current compliance plans, let me know!

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*As printed in the August 2006  
issue of Colorado Serenity*

