

Sending COBRA off to the experts: outsourcing your COBRA administration can help you escape pitfalls in the complex rules for offering health benefits to former employees. | Company Activities & Management > Business Climate & Conditions from AllBusiness.com

They're gone but not forgotten. Many former employees keep at least one important link to their previous employer: They opt to stay in the company's health plan for a limited time under the provisions of the federal COBRA law. For many HR professionals, however, administering COBRA is a task they would just as soon forget.

Although COBRA's purpose is straightforward, its administration can be complex and cumbersome. The legal requirements are so laden with details and deadlines that it's easy for an employer to unwittingly fall out of compliance. To avoid potentially costly mistakes, many companies outsource the task to experts, usually to a third-party administrator (TPA) of benefits programs.

In fact, COBRA administration is one of the most commonly outsourced HR functions. A 2004 survey by Hewitt Associates, a consulting and outsourcing firm based in Lincolnshire, Ill., found that 77 percent of 129 large companies farm it out. In a survey the same year by the Society for Human Resource Management, 55 percent of the HR professionals who responded said their companies outsource some or all of their COBRA functions; 38 percent said they outsource COBRA completely.

While outsourcing COBRA administration can be a boon to an overextended HR department, doing so doesn't necessarily relieve a company of the burden of legal compliance. If an outsourcing agreement for COBRA administration isn't set up correctly, you may not be buying as much legal protection as you might expect. What's more, if you aren't careful in selecting a vendor, you might create unwanted headaches for yourself down the road.

The Burden of COBRA

COBRA is designed to help former employees and their families maintain health insurance when they need it most--when they have lost access to employer-sponsored coverage as a result of certain "qualifying events." For example, leaving a company, whether voluntarily or involuntarily, is such an event for an employee as well as for the former employee's spouse and dependent children. Separation, divorce or the employee's death are qualifying events for a spouse and for dependents. When those events or others occur, employers are required to make an offer of continued coverage, for which the beneficiary usually must pay the full premium and an administrative fee.

The basic COBRA requirements for employers are to send notices to employees, former employees, and their spouses and children; to reinstate eligible individuals to one or more health plans; and to calculate and collect premiums. There's a lot of tracking involved, such as who's eligible and who's not, who has received which notices, when the notices were sent, whether premiums are paid accurately and on time, and so on. (See "Layers of Details" on page 92.)

"Very simple mistakes can cost employers a lot of money," says Karli Dunkelberger, vice president of sales at Conexis, a benefits administration firm in Orange, Calif., that handles COBRA for clients. The most common COBRA violations, she says, include failing to send notices on time or at all, neglecting to list flexible spending accounts--considered a type of health plan--on notices, keeping inadequate records, and not offering participants the right to add or change health plans at open enrollment.

The Price Of Breaking the Rules

The rules for COBRA administration are enforced by two federal agencies. The U.S. Department of Labor (DOL) oversees the law's notification and disclosure provisions, while the Internal Revenue Service (IRS) deals with matters such as duration of coverage and who qualifies as a beneficiary. Both agencies can levy penalties for noncompliance--the IRS can collect \$100 per day, the DOL \$110 per day.

The government rarely prosecutes COBRA violations, however. The larger risk for employers is that they'll be sued by

individual workers over mistakes in COBRA administration, which can lead to monetary judgments, attorneys' fees and court costs.

"COBRA is one of the most litigated areas of benefits," says Christine Keller, an attorney at the Groom Law Group in Washington, D.C. The law's health benefit carries an inherent risk of adverse selection, she says. Although COBRA coverage costs more than regular health insurance, she explains, "the people asking for it are the ones with a lot of medical expenses"--and the ones most motivated to seek legal remedies if they feel COBRA has been denied unfairly.

Pluses for Employers

For many employers that sponsor self-insured and fully funded health plans, outsourcing COBRA administration is a matter of risk management, experts say--a way to make sure the i's are dotted and the t's are crossed. It can also reduce certain costs.

The University of Arkansas, for example, outsources its COBRA program "because of all the legal issues," says Graham Gillis, associate vice president for benefit and risk management services. He adds that by outsourcing COBRA--it's done by Conexis--the university avoids the expenses of supporting in-house the types of resources, such as information systems, that TPAs provide for clients. Internal COBRA administration would be especially complex for the university, he adds, because its 13,000 employees are scattered across six campuses, each with its own information technology system.

Shannon Hussion, a benefits specialist at Perot Systems Government Services Inc., a government contractor in Fairfax, Va., with 2,100 employees, says, "I don't think we'd have the time" to administer COBRA. "If we did COBRA, we'd have to collect the money. In HR, you can't be a collection agency."

Another advantage for employers in outsourcing COBRA is that it can provide a buffer between HR and former workers who may get emotional in some instances, such as when questions arise about eligibility, says Dunkelberger. Employers sometimes "want someone else to be the bad guy ... to say no in a sensitive situation," she says.

Outsourcing COBRA can be especially useful for companies with high turnover because of the potentially large numbers involved, TPAs say. Every health plan participant who leaves a job at an employer with 20 or more employees must be offered COBRA coverage. Even part-time workers whose hours make them eligible for group health benefits qualify for COBRA, a situation that affects retailers and others with many part-time employees, says Jeri Stepman, national practice leader for benefits administration at global consulting firm Watson Wyatt, with U.S. headquarters in Washington, D.C.

Limiting Liability

Employers that outsource COBRA administration are ultimately on the hook if their vendors don't comply with the law, say consultants and TPAs, but they can protect themselves with a written contract reviewed by an attorney.

To avoid misunderstandings, a contract should precisely spell out each party's duties, liabilities and extent of indemnification, says John Jenkins, chief executive of COBRA Outsourcing Co., a TPA based in Omaha, Neb. Some contracts contain service-level agreements that specify the amount of time allowed for the TPA to complete certain tasks.

TPAs typically indemnify their clients and assume financial liability for their errors, sometimes within a certain dollar limit, says Wendy Drumwright, compliance manager at BenefitOne of America, a TPA based in St. Petersburg, Fla.

But TPAs generally are not responsible for mistakes attributable to employers, such as failing to notify a TPA of an employee's departure. So HR managers who outsource COBRA should designate an employee to act as a liaison with the TPA, recommends George Reese, president of FlexAmerica, a TPA based in Bethesda, Md. The aim is to notify the TPA of departing employees and qualifying events and to confirm that the employer is not paying regular health premiums for people who receive COBRA benefits.

Selecting a Specialist

Plenty of outsourcing firms can handle COBRA. When choosing from among the options, look for firms that will correct--and accept liability for--errors they may make.

Also, look for firms with technology-driven administration and top customer service, experts suggest.

Many TPAs boast about their state-of-the-art, Internet-enabled technology. Beyond checking for accuracy and efficiency, employers should see if a system is reliable and flexible enough to meet their needs, Reese says. "Everything should be done electronically," he adds, from sending monthly management reports to terminating beneficiaries.

Talk with a firm's clients. It's important to ascertain if the vendor provides good customer service. "If your COBRA employees are not well served, they're going to call you," Stepman notes.

Finally, consider price. COBRA administration costs have fallen in the past several years because of automation and heightened vendor competition, and today they don't vary much from one TPA to the next, Drumwright says.

One of the two basic methods for calculating cost is per qualifying event, say \$10 to \$20; the other is a monthly fee of perhaps 45 cents to \$1.50 per eligible employee. Analyze your COBRA activity and choose a fee structure that best fits your firm. Companies with low turnover tend to favor the first method; those that have high turnover or want more-predictable spending might choose the second method. "It's not a particularly expensive process to administer," says Larry Kurzner, senior vice president of HR outsourcing at Chicago-based Aon Consulting.

To hold down their costs in outsourcing COBRA, some employers retain specific functions, such as the mailing of initial notices. Perot Systems, for instance, sends COBRA participants forms at open enrollment and provides initial notices to new employees, Hussion says. Remaining tasks are handled for the company by FlexAmerica.

Other Factors to Consider

There is a great deal of consolidation taking place between full-service HR outsourcing firms and smaller benefits administrators, so employers should look for vendors likely to survive, Reese says. "I would evaluate their processes and their computer systems and thoroughly check [at least three] references."

Since vendors collect premiums, it's also important to ensure that a prospective vendor has proper financial controls, Jenkins says. The Sarbanes-Oxley Act requires contractors that could impact a publicly traded company's financials to be audited.

And once a contract is signed, Reese advises, "don't rush the implementation." Allow at least 60 days to make the transition from whatever system or procedure has been in place. Then let the TPA manage the job's many details and risks, leaving you and your HR department free for contract monitoring and other, more strategic tasks.

CAROLYN HIRSCHMAN IS A BUSINESS WRITER IN ROCKVILLE, MD., WHO SPECIALIZES IN HR AND BENEFITS ISSUES.

Online Resources

For additional information about outsourcing COBRA administration, see the online version of this article at www.shrm.org/hrnmagazine/06March.

There you will find links to:

- * The DOL's main page on COBRA.
- * An SHRM COBRA Toolkit.
- * SHRM's Human Resource Outsourcing Survey Report.
- * An SHRM Legal Report on COBRA compliance.
- * An SHRM white paper on frequent COBRA questions.

RELATED ARTICLE: Layers of Details

The 20-year-old Consolidated Omnibus Budget Reconciliation Act--better known as COBRA--gives workers, retirees

and their families who lose employer-sponsored health insurance benefits the right to choose temporary group coverage. The law applies to health plan sponsors with 20 or more full-time employees: part-time employees are also included in calculating whether the employer is subject to COBRA.

COBRA must be offered to employees after "qualifying events" that cause workers to lose their health benefits. Termination "for reasons other than gross misconduct" is one such event. Another is reduction in hours of employment. For family members, the events also include an employee's death; divorce or legal separation; an employee's Medicare entitlement; and a child's loss of dependent status--generally at age 18 or older, depending on plan rules. Workers must notify employers of family-related qualifying events within 60 days.

Employees who elect COBRA coverage usually are charged 102 percent of the full premium, reflecting a 2 percent administrative fee. Employer subsidies are permissible, but rare.

COBRA requires four main notices, which typically are letters sent by first-class mail:

- * The initial general notice, sent within 90 days to new employees and others who enroll in a health plan, notifying them of their COBRA coverage rights.
- * A qualifying event/election notice, sent to employees and beneficiaries within 14 days after the plan administrator has been notified of a qualifying event; the notice informs recipients of their COBRA election rights. Individuals have 60 days to elect or deny coverage, then 45 more days to pay the first premium.
- * A notice of unavailability, indicating ineligibility for COBRA coverage, provided within 14 days of a qualifying event.
- * A notice of termination, sent to participants when coverage is about to expire because of nonpayment of premiums or for other reasons, including the end of the coverage time frame.

If elected, COBRA coverage is retroactive to the date that regular health benefits end. That can be important for employees with pre-existing conditions who must prove they've had continuous health coverage to be covered by another employer's plan.

The type of qualifying event determines the period of COBRA coverage. The required minimums are 18 months for termination and reduction in hours--plus an extra 11 months if a beneficiary becomes disabled--and 36 months for an employee death. Medicare entitlement, divorce, legal separation or a dependent child's eligibility loss.

COBRA administration of medical, dental, vision and other health care plans is usually wrapped together, so that one notice covers all types of plans. Employees can elect or deny COBRA coverage for separate plans if active employees can enroll in each type of plan separately.

--Carolyn Hirschman