

Workers' Compensation and COBRA Coverage: The Forgotten Employer Obligation

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Practices: Employment, Labor & Benefits

Executive Summary:

Employers fail to offer COBRA continuation notices to qualified beneficiaries for any number of reasons. However, with regard to workers' compensation claims, more employers appear to be failing to offer COBRA continuation coverage to employees who have suffered on-the-job injuries or illnesses because they mistakenly believe that these employees are entitled to remain on the company's group health insurance plan for the duration of their workers' compensation claim. In reality, based on the group health insurance policy terms and the applicable COBRA regulations, employers should probably be offering workers' compensation claimants COBRA continuation coverage after only one to six months depending on the insurance contract provisions. The failure to provide COBRA continuation notices exposes employers to the risk of incurring civil penalties (up to \$110 per day) and such other remedies as the court deems proper for any other harm caused to the employee.

COMMON SCENARIO:

An employee suffers a job-related illness or injury. He or she receives medical treatment and is placed on a workers' compensation leave of absence. The employee is not actively at work for several weeks, months or years. Nevertheless, he or she is permitted to remain on the group health insurance plan in an active status. At some point, the employer may ask the workers' compensation insurance carrier for a return-to-work status, or the group health insurer may ask the company to clarify the employee's work status because the insurance company received a high dollar claim. Now, at the worst possible time, the employer first learns that the employee should have already been offered COBRA continuation coverage.

LEGAL SNAPSHOT:

Generally, the Consolidated Omnibus Budget Reconciliation Act ("COBRA") requires private employers (with at least 20 employees) to provide covered employees, their spouses, their former spouses, and their dependent children (known as "qualified beneficiaries") the right to continue their group health insurance coverage if it would be lost due to certain events. The date that the employee actually loses coverage is based on the insurance contract language and the life event that triggered the COBRA obligation. The COBRA-triggering events include: death of a covered employee, termination of a covered employee, reduction in a covered employee's hours, divorce or legal separation, a covered employee's becoming entitled to Medicare, and a

child's loss of dependent status. If a private-sector company employs fewer than 20 employees, it must consider its obligations under the "mini-COBRA" laws established by the state(s).

ACTION REQUIRED:

Before automatically continuing group medical insurance coverage when a workers' compensation claim is involved, employers must understand the coverage extension provisions contained in their current group health insurance contract. Most group health insurance contracts permit a one- to six-month coverage extension depending on the contract language and any concurrent obligations to extend coverage under the federal Family and Medical Leave Act ("FMLA") or similar state law. As a result, if an employee suffers a work-related injury or illness that is also subject to FMLA, he or she should probably be offered COBRA continuation coverage as soon as he or she is unable to return to work from the FMLA leave of absence. If the FMLA does not apply because of employer size or employee eligibility, the employer should offer COBRA continuation coverage when the employee first experiences the reduction of hours or on the date that their coverage would end under the insurance contract's coverage extension provisions.

SIMPLE RISK REDUCTION STRATEGIES:

To avoid possible civil penalties, other relief that a court deems proper, and the difficult real-world discussions and decisions on how to inform an employee and his or her qualified beneficiaries (if any) of the failure to provide timely COBRA continuation notices, employers should consider taking the following steps:

1. Read the Coverage Extension Provisions. All HR professionals / benefits personnel who are responsible for workers' compensation claims, leaves of absence, and COBRA continuation administration should read the applicable insurance contract coverage extension provisions and ask the carrier any interpretation questions. These provisions are often not easy to understand, and one provision may supersede another. Once understood, these provisions and their requirements should be compared to any leave of absence obligations that the employer may have under any federal or state laws and/or any company handbook.

2. Monitor Workers' Compensation Claims: In some cases, employees who have suffered a workers' compensation claim are unintentionally forgotten about by the employer as it deals with all the other employee issues for employees who are actively at work. There is often a mistaken belief that the workers' compensation insurance carrier is handling the claim in the most efficient manner. However, by monitoring workers' compensation claim statuses, employers have the latest information on absent employees, thereby enabling them to properly administer any employee benefits plans or leave of absence obligations. Generally, if the employer is interested in the claim, the workers' compensation insurance carrier is interested, too.

Please call if you have any questions on the integration of workers' compensation insurance and your COBRA continuation notice obligations. Although there are some general commonalities, the solutions are often a matter of balancing various risk scenarios.