

# Common Employer Mistakes – Outline

June 2021

*Legislation and regulations are subject to change. This guidance is current as of the date of this publication.*

## Not Offering COBRA Upon Loss of Eligibility

### Leave of Absence Considerations

Full-time requirement, and a person goes out on leave (that is not protected by the FMLA), they are not eligible for benefits

- Employer's plan should define when eligibility is lost
- The ADA, STD and LTD, and worker's compensation do not provide benefit protection for employees
- Exception: the employer is utilizing the look-back measurement method, and the employee has qualified for a stability period
  - There is an exception that allows an employer to move an employee to part-time status during the stability period under certain conditions but most employers continue full-time eligibility through entire stability period

## COBRA

Going on an unprotected (non-FMLA) leave (or failing to return from a protected leave) is the COBRA qualifying event "reduction of hours." Note: COBRA subsidy is available for reduction of hours (voluntary or involuntary)

- COBRA Should be offered when eligibility is lost
  - Extending coverage beyond the plans actual eligibility date puts the employer at risk of carrier not covering claims
  - Employers could offer to pay for COBRA coverage for a period of time as an alternative to extending coverage

## Offering COBRA Upon Medicare Entitlement

### Medicare Secondary Payer Rules

An active employee's Medicare entitlement or eligibility does not normally cause loss of plan eligibility due to MSP Rules. Employers cannot condition eligibility on Medicare for Employers with 20 or more employees (age-based Medicare) or Employers with 100 or more employees (age-based or disability-based Medicare).

## COBRA

Employee might drop employer coverage voluntarily when entitled to Medicare – this does NOT trigger COBRA for spouses or dependents. To continue coverage for the spouse or dependents, the employee would have to remain enrolled in the group health plan as well, choosing to have double coverage under the group health plan and Medicare. Commonly handled incorrectly and employers/TPAs often offer COBRA in these cases. The risk is since this is not required under COBRA continuation rules the carrier could refuse to provide claim coverage.

## HRA PCORI

Employers with fully insured medical plans often forget that they must pay the PCORI fee for HRAs.

- Multiple Self-Funded Plans: with the same plan year treated as a single plan for purposes of the fee. Each unique covered life is only counted once.
  - Major medical plan + those not covered by major medical plan.
- HRA with Fully Insured: pay the fee only with respect to each HRA participant/employee; the employer is not required to count dependents or beneficiaries.

## Missing Short Plan Year 5500

Section 125 pre-tax rules, and the ACA's employer mandate requirement to make an offer of coverage at least once a year, plan years generally cannot be longer than 12-months.

- To change a plan-year, employers often use short plan-years (when an employer tries to sync the plan with other plans it sponsors or, an employer may want to move the plan year to a calendar-year plan-year for administrative ease).
- If an employer utilizes a short plan-year, the plan-year could end on a date other than 12/31.

## Wellness Incentive Affordability

Determining Plan "Affordability" for 4980H Purposes

- Unless the wellness rate is tobacco-related, it's necessary to use the (higher) non-wellness rate to determine affordability.
  - Example Non-tobacco related wellness incentive
    - Regular required monthly employee contribution is \$250/month. Potential wellness incentive (NOT tobacco-related) reduces employee contribution to \$150/month.
    - The coverage is "affordable" so long as **\$250** does not exceed 9.83% (in 2021) of the employee's household income.
    - Employer Reporting - \$250.00 should be entered on Line 15 of Form 1095-C, regardless of whether the individual satisfies the wellness program requirements or not.
  - Example Tobacco-Related Wellness Incentive
    - Required monthly employee contribution is \$250/month. Potential wellness incentive (tobacco-related) reduces employee contribution to \$150/month.
    - The coverage is "affordable" so long as \$150 (not \$250) does not exceed 9.83% (in 2021) of the employee's household income.
    - Employer Reporting - \$150.00 should be entered on Line 15 of Form 1095-C, regardless of whether the individual is a tobacco user or not.

## DCAP Non-calendar Year

Tax-free Reimbursement Limit Applies on Calendar Year Basis

- This is the case even if the employer runs a non-calendar year Section 125 plan
  - Most employers ensure that employees do not exceed limits on a plan year basis
  - Grace period reimbursements count towards the annual limit
    - Exception for 2021 limit for carryovers and grace periods from 2020

- Consequences of being reimbursed more than the annual limit
  - The amount above the limit is considered taxable income
- ARP Increased the 2021 DCAP Reimbursement Limit
  - From \$5,000 to \$10,500 (or from \$2,500 to \$5,250 for individuals who are married but filing separately)
  - 2021 only – does not apply to 2022
- Employee Communication
  - If an employer sponsors a non-calendar year plan year, they should be sure to communicate the reimbursement requirements to employees

## Lookback Measurement Method Issues

### Premium Tax Credit (PTC) Amount

Must Use Same Measurement Period on all Employees Within a Class

- Collectively bargained and non-collectively bargained employees or employees covered by different collective bargaining agreements
- Salaried and hourly employees
- Employees whose primary places of employment are in different states

Change in Employee Status

- Ongoing employee in a stability period generally finishes the stability period with their status
  - 3-month exception for employees hired as full-time
    - Does not apply to employees subject to initial measurement period)
    - Employee status changed and works less than 130 hours for 3 months – can be treated as part-time ineligible on the beginning of 4th month
- Hired as full-time, change before first standard measurement period completed
  - The employer can terminate coverage first of next month
  - But must be switched back if they work 130 hours in subsequent months
- Break-in-service
  - Do not subject employees to a new initial measurement period (unless they have been gone for more than 13-weeks)

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