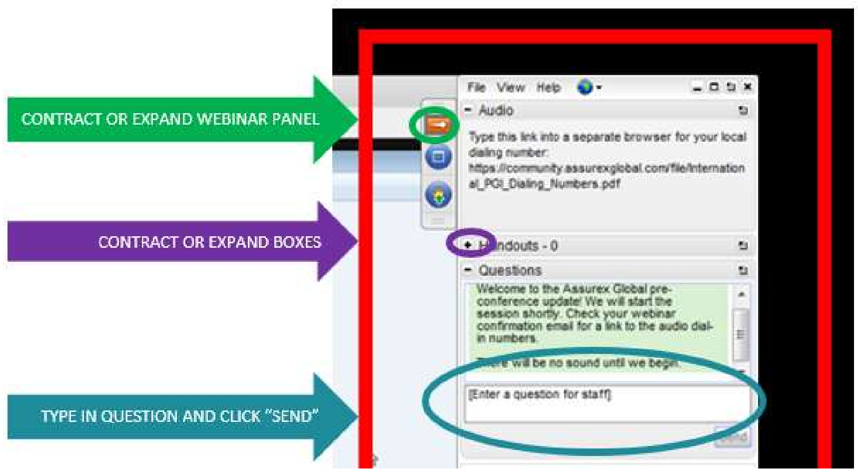
2021

Common Employer Mistakes

Presented by Benefit Comply

COMMON EMPLOYER MISTAKES

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



Assurex Global Partners

- Bolton & Company
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Agenda

- Not offering COBRA upon loss of eligibility
- Offering COBRA upon Medicare entitlement
- HRA PCORI
- Missing short plan year 5500
- DCAP non-calendar year
- Wellness incentive affordability
- Lookback measurement method issues

Not Offering COBRA Upon Loss of Eligibility

Not Offering COBRA Upon Loss of Eligibility

Loss of Eligibility

- When an employee goes on extended leave (that is not protected by FMLA), they are typically not eligible for benefits under eligibility rules of the plan
  - Employer’s plan should define when eligibility is lost
- The ADA, STD and LTD, and worker's compensation do not require employer to continue to provide health insurance
- 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 (more later) under certain conditions but many employers continue full-time eligibility through entire stability period

Not Offering COBRA Upon Loss of Eligibility

- 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

The Problem: Employers sometime extend coverage beyond the plan's loss of eligibility date

Offering COBRA Upon Medicare Entitlement

Offering COBRA Upon Medicare Entitlement

- Medicare Secondary Payer
  - 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 $\geq$ 20 EEs (age-based Medicare) or Employers $\geq$ 100 EE (disability-based Medicare)
  - To continue coverage for the spouse or dependents, the employee would have to remain enrolled in the group health plan with coverage under both the group health plan and Medicare
    - Employers Plan would be primary

The Problem:
Employee might drop employer coverage voluntarily when entitled to Medicare – this does NOT trigger COBRA for spouses or dependents

Offering COBRA Upon Medicare Entitlement

- COBRA
  - Often handled incorrectly and employers/TPAs offer COBRA
  - Employer risk - Since this is not required under COBRA continuation rules the carrier could refuse to cover claims incurred

HRA PCORI

HRA PCORI

- PCORI Fee
  - – Self-insured employer must pay PCORI fee for Major medical and HRA by July 31st every year
  - – Fully-insured employers – carrier pays the fee
- Employers with an HRA
  - – If employer offers both a self-insured heath plan and an HRA it treated as a single plan for purposes of the fee. Each unique covered life is only counted once
  - – 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

The Problem:
Employers with fully-insured medical plan forget that they owe the PCORI fee for their HRA

Missing Short Plan Year 5500

Missing Short Plan Year 5500

- Short Plan Year
  - 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
  - In order 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

The Problem:
Employers often forget to file a separate 5500 after implementing a short plan year

Wellness Incentive Affordability

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

Wellness Incentive Affordability

- Determining Plan "Affordability" for 4980H Purposes (cont.)
  - 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

Non-calendar Year DCAP

DCAP Non-calendar Year

- Tax-free Reimbursement Limit Applies on Calendar Year Basis
  - Applies 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 ($2,500 to $5,250 for married filing separately)
  - 2021 only – does not apply to 2022

Lookback Measurement Method Issues

Lookback Measurement Method Issues

- 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

The Problem:
Some employers try to use a different measurement period just for variable hour or seasonal employees

Lookback Measurement Method Issues

- 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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