



Could this be you? Confession is good for the bottom line

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Just the Facts, Please

It's easy to do and has happened to most (if not all) human resources departments at one time or another — the failure to provide a timely COBRA Qualifying Event Notice to employees. We recently encountered this issue when an employer called to inquire whether it could terminate an employee who failed to return to work after a non-FMLA leave of absence.

As part of our conversation with the client, we inquired about group health plan coverage and discovered that the client's group health plan only allows an employee to continue to participate in the group health plan for up to one year while on any type of leave of absence. We also discovered that while the employer had properly dropped the employee from coverage under the group health plan at the 12-month mark of the employee's leave of absence, the employer did not provide the employee with a COBRA Qualifying Event Notice at that time.

What Did We Advise The Client To Do?:

In the past, self-correction would have taken care of this situation. Though the Internal Revenue Code (IRC) contained an excise tax for failing to provide COBRA notices timely, group health plans were only assessed excise taxes if compliance failures were discovered during an IRS audit. Now, in addition to self-correction, administrators of group health plans are required to self-report certain compliance failures and pay any related excise taxes. Accordingly, we immediately informed the client of the employer's potential excise tax under IRC §4980B and advised the employer to immediately send the COBRA Qualifying Event Notice to the employee. We also advised the client that the failure to provide the COBRA Qualifying Event Notice needed to be reported on IRS Form 8928.

We advised the client that if the failure to provide the COBRA Qualifying Event Notice was due to reasonable cause — and not due to willful neglect — and if the failure was corrected within the 30-day period beginning on the first date anyone liable for the tax knew, or exercising reasonable diligence should have known, that the failure existed, then no tax is due when the Form 8928 is filed.

We also alerted the client that Form 8928 is to be used to report and pay excise taxes owed for the failure to follow certain other statutory provisions, including HIPAA portability, HIPAA nondiscrimination, GINA, Mental Health Parity, Newborns' and Mothers' Health Protection Act (NMHPA), Michelle's Law, comparable employer contributions to Health Savings Accounts (HSA) and Archer Medical Savings Accounts (MSA), and the market reform provisions of the Patient Protection and Affordable Care Act (ACA).

We have included the following [link](#) to a client bulletin we prepared summarizing the procedures for filing Form 8929 and listing the failures that trigger self-reporting.

Employer Takeaway: In light of the self-reporting requirements, employers sponsoring group health plans should implement procedures or develop checklists to ensure compliance with the group health plan requirements for self-reporting on the Form 8928. Employers should also periodically audit their group health plan to verify that the group health plan requirements are being followed.

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