



Are You Downsizing?

Survival tactics for the economic wilderness

By: Robert Meyers

Unemployment rates are skyrocketing and so is COBRA enrollment activity. In the last half of 2009, America experienced the highest unemployment rates in 25 years. And since the American Recovery and Reinvestment Act of 2009 (ARRA) was enacted, COBRA enrollments have doubled. In fact, it's estimated that more than 14 million people are eligible for the COBRA subsidy. Unfortunately, it doesn't look like the unemployment siege will wave a white flag anytime soon. So what does this mean for employers? If you're less worried about growing and more worried about surviving, here are a few survival tactics to help guide you through the economic wilderness.

1. Prepare to endure a long, grueling COBRA haul. In addition to the standard COBRA requirements for businesses with more than 20 employees, many states have laws that extend COBRA-like coverage to small group health plans. And, some states have recently extended their COBRA periods beyond the typical 18 months. Here are two common compliance obstacles:

- **Mini-COBRA:** The majority of businesses don't fall under federal COBRA provisions, so most states have enacted their own versions of COBRA regulations to protect small firm employees. These state continuation laws are often referred to as mini-COBRA and require smaller companies – usually with two to 19 employees – to provide continued coverage to unemployed workers as long as they pay both the employer and the employee share of the premium. Make sure you are ready to comply with both federal and state requirements.
- **Extended COBRA periods:** Another COBRA inconsistency appears between coverage periods. Some states are passing laws that extend the 18-month COBRA coverage period. Take the state of New York for example: In July 2009, the state passed a law allowing workers eligible for federal COBRA to elect 18 months of COBRA and then an additional 18 months of mini-COBRA (state continuation coverage), for a total of 36 months.

The discrepancies between federal COBRA laws and state continuation laws add to the complexity of COBRA administration. As an employer, it's a good idea to get familiar with both sets of laws and know COBRA and mini-COBRA requirements before any layoff decision. The easiest way to find out if your state requires COBRA for small employers is to contact the State Department of Insurance.

2. Evaluate cost-effective downsizing strategies. When employers objectively consider the growing COBRA burden and the added complications of ARRA and state requirements, many find that current HR abilities are insufficient. Help yourself understand and anticipate the pending workload. Here are a few good points to consider:



- **Are you satisfied with how COBRA is currently managed?** Review the adequacy and sufficiency of existing administration procedures. The resulting COBRA administration load may be overwhelming. Evaluate present procedures so you can make decisions about future administration activity.
 - **How many employees will be affected by the layoff?** Estimate the additional COBRA reporting and paperwork coming down the pipeline.
 - **After the downsize, what will the final employee count be?** Determine where your company will fall with respects to federal COBRA provisions versus state continuation laws going forward.
 - **Do you have the capacity to take on added COBRA administration responsibilities?** Consider employee workload. With fewer employees, your company may struggle with administration.
- 3. Understand and eliminate inherent risks.** As the HR burden grows, so does the risk of human error. When it comes to COBRA, small errors can add up to big expenses. Failure to catch a mistake on one health carrier's bill can result in a four-figure overpayment. And that's nothing compared to the cost of fines associated with COBRA noncompliance or to the cost of a lawsuit. Are you prepared to "self-insure" these risks or would you be better off transferring some of the risk to a certified COBRA administrator with professional liability insurance. If you prefer to administer COBRA in-house, make sure to create workflows and checkpoints to minimize the chance of error.

This is a make or break time for many employers. More than ever before, you'll be challenged to creatively do more with less. By staying informed and proactive, you can discover greater efficiency, smarter solutions and sustaining survival strategies.

More information on ARRA and COBRA assistance can be found at the U.S. Department of Labor and the Internal Revenue Service. Make sure to contact your State Department of Insurance for detailed mini-COBRA law information.

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