

SPECIAL
BROKER REPORT



How Brokers Can Minimize COBRA Administration Liability

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Every year, it's a good idea to spruce up your sales script, upgrade your marketing materials, and take stock of sales-related processes and opportunities. This is especially true in regard to your clients' COBRA processes.

Ask most brokers and they'll tell you their clients make their own decisions about COBRA. Ask most employers and they'll say their brokers manage their COBRA administration. It's become a confusing hotspot and a dangerous situation for all involved. If employers think you're handling COBRA and you're not, it can generate legislative fines and lawsuits for your clients. It can also create professional liability for you. Although employers are ultimately responsible for any costs due to noncompliance, they can sue you for not doing your job correctly.

Rather than letting confusion reign, take this opportunity to create clarity. Define your role as a broker – make it clear that you're not a COBRA administrator, and use the following simple strategies to eliminate COBRA chaos.

1. Update your Communication Process.

If you're a broker, communicate with employers about COBRA at least three times a year. Contact clients 90 days prior to their plans' pre-expiration dates, before open enrollment, and after the first of the year.

- **90 Days Before Renewal:** Pre-renewal communication presents an opportunity for you to ask consultative questions about your clients' plans and how COBRA requirements are being managed by each company. It affords you time to help determine the best go-forward COBRA administration strategy and to help make sure they take care of the risks at renewal.

- **Open Enrollment:** It's a critical point of contact for brokers because health plans and COBRA administration go hand-in-hand. COBRA plans are often affiliated with the employer's health plan carriers, and sometimes when people change carriers they forget to check on COBRA to see how carrier decisions impact COBRA administration.
- **First of the Year:** After the start of the year is when most employer health plans go into effect. It's also when a lot of employers who didn't plan at open enrollment discover they made mistakes and failed to come up with a plan for COBRA administration. COBRA administrators always get a lot of calls from employers in January who need services right away because the employer didn't realize their change in health insurance carriers left them without a COBRA administration program.

2. Introduce a Waiver of Liability Form.

For employers, COBRA compliance is critical. Business owners put themselves at risk when they don't have clear COBRA administration plans in place. This situation puts you, the broker, at risk too.

To protect yourself, always present clients with a waiver of liability. The waiver states that you've informed the employer about the risk of oversights when self-administering COBRA or not having a good automated COBRA administration plan in place, and that after receiving the information, the client declined to use a COBRA administrator. By presenting the waiver of liability for the client to sign, you protect yourself and put the group on notice that you're not managing COBRA for them. The client realizes that self-administering COBRA is an important decision and a challenging proposition. The act of signing a waiver of liability makes people think twice about their decisions.

By establishing year-round communication and introducing a waiver of liability, you delineate your role in COBRA administration. And when you create clarity, you attract and retain more clients, outperform your competition, and secure client loyalty this year and beyond.

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