



Confusion around COBRA and whether or not it applies:

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A very common scenario that Jon and I are running into is the contractor with 10 non-union employees on payroll with another 30 union employees (on average) also on payroll. With COBRA only applying to employers with more than 20 employees, it is easy to understand why this employer in the example would think COBRA might not apply to them if they're only accounting for the 10 non-union employees... "I have less than 20 employees." However, they must also take into consideration that the union employees should be included in this calculation. Therefore, this makes COBRA applicable to their organization, and their non-union employees covered by the group health plan must be provided with the appropriate COBRA rights.

Due to the size of their company, we realize many of your members might have limited resources when it comes to their Human Resources team (typically it's someone in Payroll, an Office Manager, etc.)

Here are a couple helpful tips to make sure everyone is on the same page with regards to compliance:

- 1) Assuming COBRA doesn't apply to you: In general, COBRA will apply to employers that have 20 or more employees on more than 50 percent of the typical business days in the previous calendar year. This means that the calculation will apply for the entire calendar year; it does not change if the number of employees goes up or down. So, it can be dangerous to assume that you don't have to offer COBRA if your staff levels decrease.

Also, take care to count employees of companies that are under common control and both full-time and part-time employees. A part-time employee counts as a fraction: divide the number of hours the employee worked by the number of hours required to be full-time.

- 2) Required COBRA notices: General (or Initial) Notice. This notice provides general information to plan participants regarding COBRA and the plan's procedures. It must be provided **within 90 days after plan coverage begins** and must be written to be understood by the average plan participant. It may be provided as part of a Summary Plan Description. The COBRA notice rules specify the required content (see below) and also provide a model notice.

If it is determined that COBRA does not apply to a particular employer due to their size, it is very important to keep in mind that **Illinois Continuation Rights are still applicable**.

Attached in the Education Corner are links to materials to support our concerns for your members.