

CLIENT ALERT

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Important considerations for employers to bear in mind regarding enrollment into the individual Marketplace...

Now that the open enrollment has closed in the individual Marketplace, there are only limited instances when a person can enroll in the Marketplace prior to the next annual open enrollment period. These are defined as Special Enrollment Events. In general, coverage must be requested within 60 days of the triggering event. Special Enrollment Events include:

- Ø Loss of Essential Health Coverage.
- Ø Marriage, Divorce, Death, Birth or Adoption.
- Ø Change Citizenship Status
- Ø Change Premium Tax Credit Eligibility: becoming newly eligible or newly ineligible for federal assistance (advance payments of the premium tax credit, cost sharing reductions, or Medicaid)
- Ø Moving into a New Marketplace Region

Special Enrollment Events DO NOT INCLUDE:

- Ø A Mid-Year Renewal of a Group Health Plan. (plans not renewing on January 1)
- Ø Termination of COBRA other than COBRA Exhaustion.

Plans that renew mid-year

Employees may not enroll in the marketplace in lieu of the Group Health Plan at renewal unless they also experience a Special Enrollment Event as described above. If your group health plan is not subject to a Section 125 plan, then employees may drop coverage and enroll in the Marketplace during its open enrollment, for coverage effective on January 1. If however, the group health plan is subject to Section 125 regulations, the only way an employee may drop the group health plan and enroll in the Marketplace is to designate contributions as post tax at the group health plan renewal. This will enable the employee to drop coverage off of the group health plan renewal and enroll in the Marketplace at its open enrollment, for coverage effective on January 1.

Important considerations to COBRA coverage in light of the ACA...

Termination of COBRA Coverage

The most common reason for termination of COBRA: non-payment of premium and thus the loss of COBRA coverage is not considered a Special Enrollment Event. COBRA qualified beneficiaries who lose coverage for non-payment of premium or who voluntarily terminate their COBRA before COBRA exhaustion may only enroll in the Marketplace at the annual enrollment period or if they experience a Special enrollment Event as described above. This is particularly important where employers may pay for a portion of or all of the COBRA cost for a terminated employee as part of a severance package. By doing this, employers may be inadvertently locking their former employees into COBRA coverage until the next annual Marketplace Open Enrollment.

While the government required new wording to be added to COBRA Notices in October of 2013, there is now concern that the suggested wording was not sufficiently clear to COBRA qualified beneficiaries. To resolve this issue, new explanatory wording is to be added to COBRA notices and COBRA qualified beneficiaries have been given a Special Enrollment Period from May 2, 2014 to July 1, 2014 in which they may voluntarily drop their COBRA coverage and enroll in the Federally Facilitated Marketplace. The government has encouraged those states with their own state run marketplace to follow suit.

Of critical importance but not yet addressed is the aspect that COBRA qualified beneficiaries must understand that COBRA coverage typically provides coverage that is retroactive to the date that coverage for an active participant ended, while the Marketplace coverage may be prospective only. Depending on when an active person's coverage actually ends, opting for Marketplace coverage in lieu of COBRA may result in a gap of coverage.

There has been no guidance or regulation that mandates employers provide new notices to COBRA qualified beneficiaries regarding this Special Enrollment Period. We are therefore providing this information to you as a courtesy.

DISCLAIMER: This e-mail/Client Alert is informational only and is not meant to advise you of your entire obligations under COBRA, Section 125 or the ACA. This information is not considered insurance, legal or tax advice.

If you would like more information, please do not hesitate to contact our office, your accountant or your legal counsel.