

## Consequences for Failing to Comply with COBRA

For employers subject to Federal COBRA, it is crucial to comply with the rules or face serious consequences. The fines vary for different compliance failures, the number of compliance failures, and people affected. Potential consequences for failing to comply with COBRA include the following.

### Excise Taxes

Excise taxes may be assessed under the Code for each failure to comply with any of COBRA's requirements (including, for instance, failure to provide timely or adequate notices and failure to calculate and charge correct premium amounts). The excise tax is \$100 per day (\$200 per day if more than one qualified beneficiary is affected with respect to the same qualifying event) for each day the failure continues. For failures due to reasonable cause and not willful neglect, the excise tax is subject to an overall annual limit, and the IRS has the discretion to waive all or part of the tax. Certain failures to comply with COBRA must now be self-reported on IRS Form 8928.

### Statutory Penalties

Under ERISA, a qualified beneficiary may recover statutory penalties of up to \$110 per day for failure to provide certain notices under COBRA. Penalties are assessed against the plan administrator: As the plan sponsor, your company is the plan administrator unless some other entity or individual is designated in controlling plan documents. An award of penalties is discretionary; courts sometimes consider factors such as prejudice or injury to the qualified beneficiary in determining whether to assess a statutory penalty and the penalty amount.

### Lawsuits for COBRA Coverage

A qualified beneficiary of a private-sector plan may sue for retroactive COBRA coverage under ERISA. ERISA lawsuits for COBRA coverage can involve significant monetary awards, which an insured plan's insurance might not cover. For example, a court typically awards a successful claimant the amount of the qualified beneficiary's medical bills during the relevant time period, reduced by the deductibles, co-payments, and premiums that the qualified beneficiary would have paid for COBRA coverage.

### Other Relief under ERISA

In addition to the up to \$110 per day penalties mentioned above, ERISA's COBRA provisions permit a court to award "other relief" to a qualified beneficiary for a failure to provide adequate initial and election notices. While the meaning of "other relief" is not entirely clear, it may include monetary damages beyond the cost of COBRA benefits when, for example, a medical condition worsened because the qualified beneficiary did not seek treatment due to the lack of COBRA coverage.

### Attorney's Fees

In all lawsuits under ERISA, the court can award attorney's fees and interest to the prevailing party.