

COBRA Tips®

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Is Voluntary Coverage Subject to COBRA?

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The following is an excerpt from [Questions and Answers from the COBRA Help Desk—Part III](#):

Broker: Is it true that voluntary health coverage is subject to COBRA?

OnQue: A voluntary plan is not subject to COBRA if the employer meets the Department of Labor (DOL) safe harbor requirements, which are:

1. The plan must be completely voluntary, with no employer contributions;
2. The employer may not endorse the plan in any manner; and,
3. The employer's involvement must be strictly limited to:
 - a. permitting the insurer to promote or publicize the plan directly to employees;
 - b. collecting premiums through payroll deductions; and,
 - c. remitting the premium payments to the insurer.

These requirements appear to be straightforward; compliance should be easy to maintain and easy to prove when challenged. However, there is a catch in the language—a word that gives attorneys something to argue about: *endorse*. Is a manager's recommendation to an employee deemed a company endorsement of the plan? Maybe, maybe not. The answer depends on many factors, including who is making the call. And those calls are generally made by attorneys, who argue about it, and federal judges, who make the final decision. If that decision goes against the employer, the dollars fed the litigation machinery will likely be trivial when compared to the cost of paying the family's medical bills.

Employers are sometimes free to sidestep this issue completely by including voluntary plans in their COBRA offering. I imagine that the administrative burden would be minor compared to the task of ensuring compliance with the DOL safe harbor requirements, particularly in light of the endorsement issue. However, many employers have no choice, because their insurers prohibit continuation of voluntary plans by requiring them to meet the safe harbor requirements.