Pie à la mode contains two parts, pie and ice cream. You can have each alone, but only together will they make pie à la mode. The same is true with COBRA. There is an event and a loss of coverage. You can have each alone, but for COBRA to be offered there must be both.

Keep in mind the pie is a triggering event, which is one of the following: (1) termination of employment for reasons other than gross misconduct; (2) reduction in hours; (3) divorce or legal separation; (4) employee’s death; (5) a child ceases to be a dependent; (6) Medicare entitlement; and (7) bankruptcy. (For more information on qualifying events, see the October 2011 article, “Tricks When Offering COBRA Are Not Always Magical Acts,” as well as ¶1120.)

The ice cream is the loss of coverage. The formal definition of loss of coverage is when “an individual ceases to be covered under the same terms and conditions as in effect immediately before the qualifying event.” Sounds like a sweet frozen treat, right?

When you combine the pie (triggering event) and the ice cream (loss of coverage), then and only then do you have a COBRA qualifying event. In other words, the triggering event must cause the loss of coverage in order to offer COBRA. You must have both ingredients. For example, a reduction in hours that does not cause a loss of coverage is not a COBRA qualifying event.

There are instances when this sweet treat is not as simple as your favorite vanilla flavor that is served with the pie. It could have some ingredients included that may make it ice cream even though you wouldn’t think that was the case. Loss of coverage also could include:

- Increase in the premium or contribution
- Bankruptcy
- Removal in anticipation of a qualifying event

Let’s review these scenarios.

**Loss of Coverage**

When an employee is terminated, the group health plan will determine when the coverage will cease. This is usually the most common of the loss-of-coverage scenarios. It may be the same day as the triggering event or it could be a future date, such as the end of the current month.

This is determined by the plan terms. There can be special circumstances that cause the loss of coverage to be delayed, such as severance packages. (For more information on delayed loss of coverage, see the December 2007 article, “Fitting the Puzzle Pieces Together with COBRA Can be More Than Child’s Play” and the August 2012 article, “Severance Agreements Can Present COBRA Challenges.”)

**Increase in Premium**

The IRS 1999 final COBRA regulations included a description for loss of coverage as any increase in premium or contribution that must be paid for coverage as a result of a triggering event. This could come into play when a full-time employee is paying a set premium for coverage then reduces the number of hours worked. The employer still allows the person to remain on the plan; however the employee must pay more for the coverage.

This increase in premium due to the reduction in hours constitutes a loss of coverage; therefore, COBRA would be offered. Remember, reduction of hours is already a triggering event, so the increased premium would constitute the loss of coverage and therefore a COBRA qualifying event.

This does not mean that an employer increasing health plan premiums at open enrollment would constitute a loss of coverage. That is because a triggering event did not cause the increase in health plan premiums. It’s imperative for there to be a triggering event to go along with the loss of coverage due to a change in the premium amount.

See Loss of Coverage, p. 10
Bankruptcy

If an employer files for bankruptcy and there is a loss of coverage or any substantial elimination of plan coverage, this would be defined as a loss of coverage. This must occur within 12 months before or after the date the bankruptcy proceeding begins. This rule only applies to retirees.

It’s important to have both pieces to the pie à la mode: the pie (qualifying event) and the ice cream (loss of coverage).

Anticipation of an Event

Loss of coverage may not always occur concurrent with the qualifying event. In some cases, it occurs before the event take place. The most common example of this is reduced or eliminated coverage in anticipation of an event, such as a divorce.

Should an employee remove a spouse from the plan before a divorce, COBRA still could be offered once the divorce has been finalized. In this instance, the loss of coverage could be considered “in anticipation” of the event. Once the triggering event of divorce occurs, then COBRA would be offered, even though there was no coverage the day before the event. (For more information on divorce events, see the July 2007 article, “Employers Should ‘Anticipate’ COBRA Issues with Divorce.”)

It’s important for employers to make sure they have both pieces to the pie à la mode. The pie (qualifying event) and the ice cream (loss of coverage) are important parts. Should an employer offer COBRA without both ingredients, it could be found liable and in turn become a costly dessert.

Lawsuit on Loss of Coverage

An employer successfully applied the COBRA definition of loss of coverage in Arnold Karp v. The Guardian Life Insurance Co. of America. (See ¶1900.) The employer terminated the employee after he did not return to work following a leave of absence during which he received short-term disability benefits. Upon termination, the employee became qualified for long-term disability benefits. He was able to continue on his health plan coverage from the employer at no cost until his LTD benefits ended.

The employee became Medicare entitled during this period with the employer’s assistance. The employee continued on the health plan for 30 months. It was at that point that the employer determined the employee was no longer disabled. He was then removed from the health plan due to no longer meeting the eligibility for coverage due to the end of his disability. The employee sued the employer for not offering COBRA coverage when his coverage ended.

The court reviewed the facts and looked for two things to occur, a triggering event plus a loss of coverage. The two events that did occur in this case were termination of employment and Medicare entitlement. However, the court determined that neither event caused the employee to lose coverage.

The employee did have a termination of employment, but the employer allowed the employee to remain on the health plan (contingent on the LTD). Therefore, the court determined that no loss of coverage occurred as a result of this triggering event.

While the employee did become disabled under the Social Security Act and eventually gained Medicare entitlement, the rules state that this type of triggering event only applies to a spouse and/or dependent children. While there was loss of coverage, this triggering event also could not be considered a qualifying event for the employee, and COBRA did not need to be offered. Additionally, this event did not cause the loss of coverage. It was the fact that he was no longer deemed disabled that caused the loss of coverage.

In the end, for the sweet dessert of pie à la mode (a COBRA qualifying event), employers must make sure they have both fixings — the pie and the ice cream — or a triggering event and a loss of coverage.