

# Employer Risks

Covering Ineligible Participants  
Fiduciary Responsibility

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## Bob Radecki



**SVP Business Dev. &  
Consulting**

**Lumelight**

[Bob.Radecki@Lumelight.com](mailto:Bob.Radecki@Lumelight.com)

# Session Objectives

- 1 Identify plan eligibility issues that pose a risk to the employer/plan sponsor.
- 2 Describe how to handle these issues to mitigate risk to the employer.
- 3 Update participants on the status of health plan fiduciary related lawsuits and recommend actions employers can take to minimize risk

*Employee X has not been working for 8 months but is still on the plan, what should I do now?*



Extending Coverage Beyond Plan Eligibility

## **Common Plan Eligibility Mistakes**

Not Offering COBRA Correctly

Not Auditing Participant Eligibility

# What to Ask When an Employee is Not at Work



1 – Is absence legally protected?



2 – Do plan documents address eligibility during absence or leave?



3 – What is employer's HR policy regarding benefits during the absence or leave?



4 – What does the carrier contract or stop-loss agreement say about eligibility?

# The Rescission Rule

## A “Rescission” is a Retroactive Termination of Coverage

Employers are prohibited from retroactively terminating health coverage except for the following reasons:

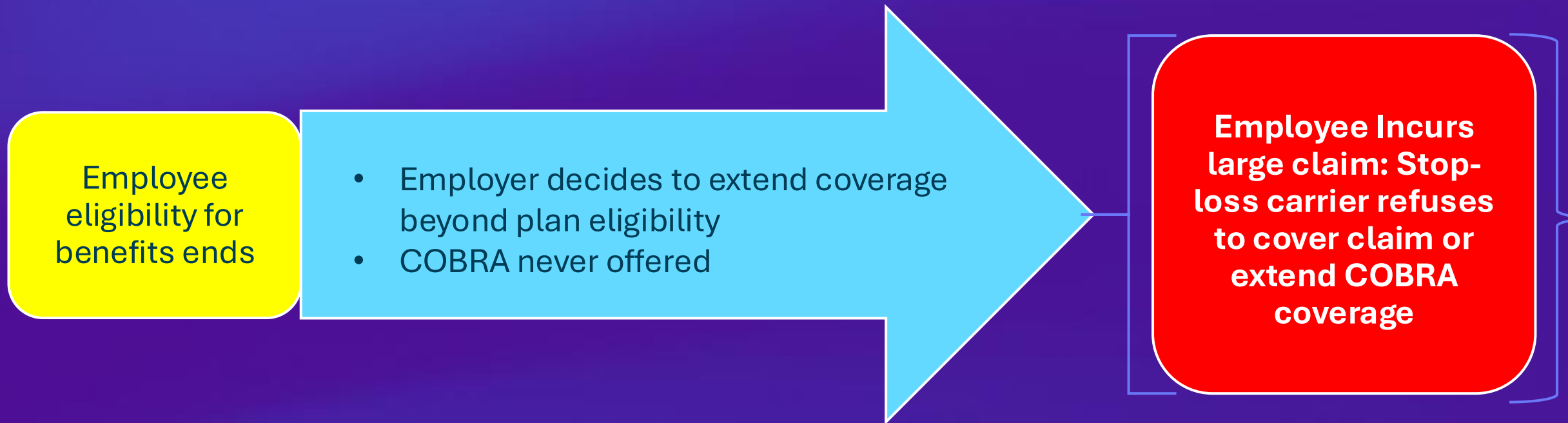
- Nonpayment of premiums
- Participant fraud or intentional misrepresentation

Rescissions are not permitted due to an employer eligibility mistake



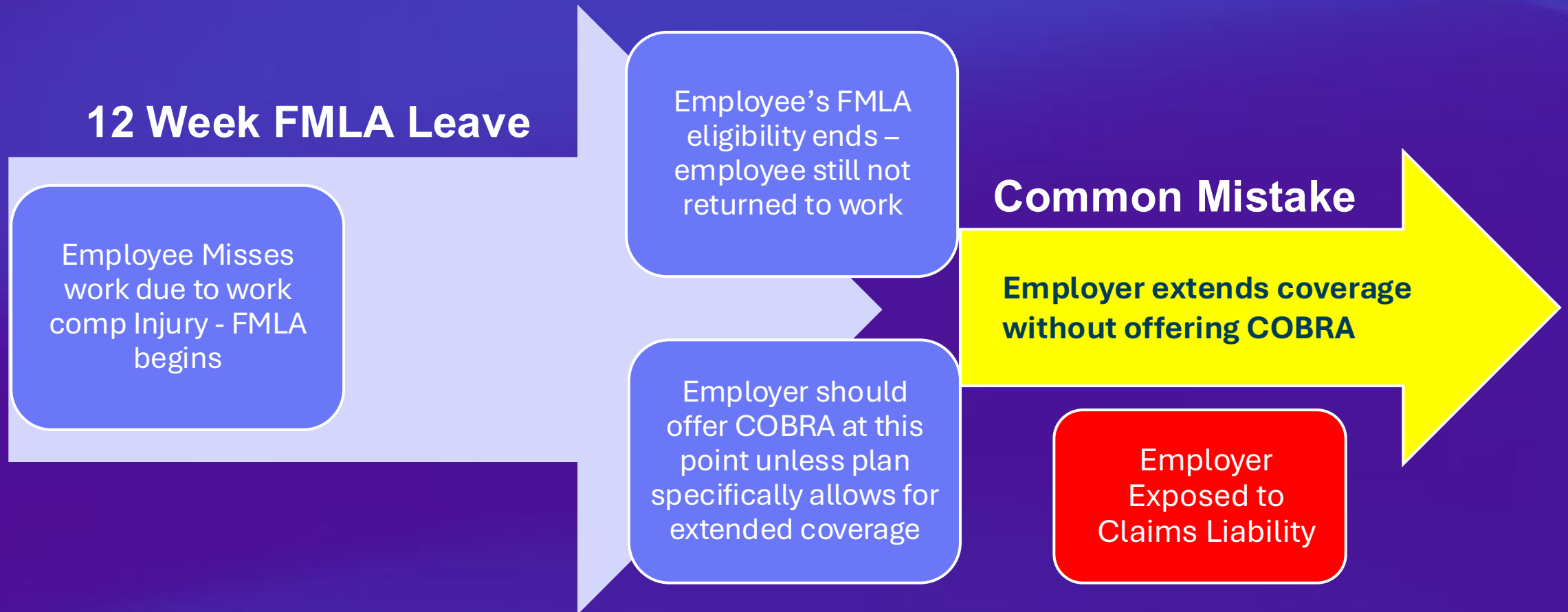
# Employee Coverage Extended Examples

- Employee absent after WC injury for more than 12 weeks
- Former executive offered extended plan coverage as part of a severance

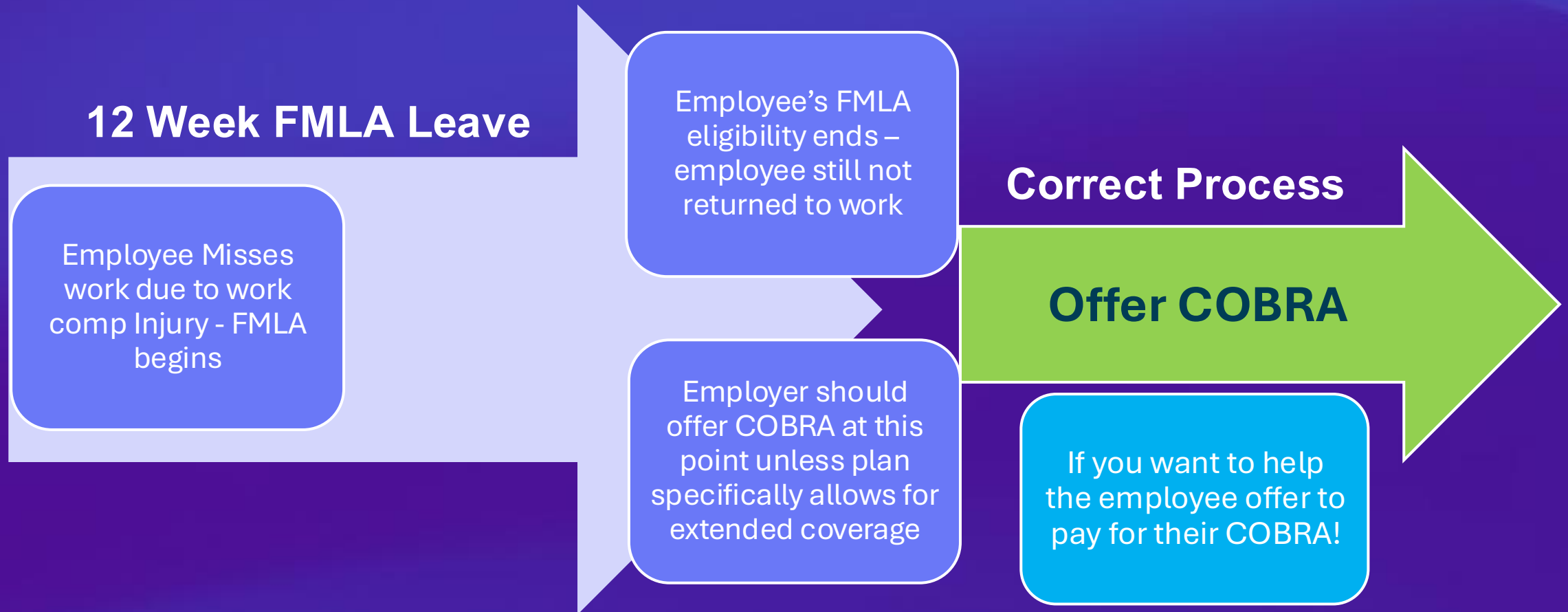


- Rescission Rule prohibits employer from retroactively canceling coverage

# Workers' Comp Example



# Workers' Comp Example



# COBRA and FMLA

- **COBRA Not Offered at Correct Time During FMLA Leave**

- Leave as a COBRA Event
  - A reduction in hours that causes a loss in plan eligibility is a COBRA event.
- Coordinating COBRA and FMLA
  - Taking FMLA leave is NOT a COBRA qualifying event even if employee chooses not to continue health coverage during the leave.
  - A COBRA event occurs if EE, Spouse, or Child is covered on the day before the FMLA leave, and the employee does not return to work at the end of the leave.
    - COBRA coverage begins as of the last day of the employee's FMLA leave .
    - Even if employee does not continue health insurance during leave COBRA still does not begin until end of employee's FMLA leave.
    - There may be a “gap “ in coverage before the onset of COBRA.

## 12 Week FMLA Leave



## Common Mistake



## 12 Week FMLA Leave

FMLA begins –  
employee  
chooses not to  
pay for health  
coverage

No health  
coverage for 12  
weeks of FMLA

Employee's  
FMLA eligibility  
ends –  
Employer offers  
COBRA now

Correct Process

Offer COBRA from end of  
FMLA eligibility

# Plan Eligibility Audits

We find ineligible participants on the plan every time we do an eligibility audit!

Former spouses not removed from plan

Children on plan that do not qualify as an eligible dependent under terms of the plan

Inactive employees who have been left on the plan beyond their eligibility



Risk

- Excess Plan Cost
- High Claims Risk
- Fiduciary Responsibility

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# Employer Fiduciary Responsibility

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# Fiduciary Litigation

During 2024-2025, there was a wave of litigation targeting major employers including Johnson & Johnson, Wells Fargo, and JPMorgan Chase focusing on pharmacy benefit manager oversight and related fiduciary responsibilities



## Primary Allegations

- Imprudent selection and monitoring of pharmacy benefit managers
- Inadequate oversight of drug pricing and rebates
- Failure to monitor administrative fees and formulary design
- Undisclosed or poorly managed conflicts of interest

## Case Outcomes

- Most cases have been dismissed by courts for lack of standing or failure to demonstrate actual harm
- However, dismissal does not eliminate the reputational risk or substantial legal costs associated with defending these claims

# Fiduciary Litigation

New ERISA litigation has emerged with lawsuits filed in 2025 targeting voluntary benefit arrangements (e.g., critical illness, hospital indemnity)

- **Why these cases are different...**
  - Employees generally pay 100% of voluntary plan premiums
  - Loss ratios of most plans are very low
  - All size and types of employers offer these types of plans

# Fiduciary Litigation – What's Next

- Watch cases related to voluntary plans closely – will any of them actually go to trial?
- If plaintiffs win large settlements, there will be a significant increase in cases.
- If any cases go to trial and defendants win this approach to accusing employers of violating their fiduciary duty will peter out...

# What Does it Mean to Be a Fiduciary?



**Act in the best interest  
of plan participants**

# Fiduciary “Checklist”

## Establish Fiduciary Governance

- Designate fiduciaries and form a benefits or fiduciary committee
- Clearly define roles, responsibilities, and decision-making authority

## Understand Fiduciary Duties

- Act solely in the best interest of plan participants
- Follow plan documents and ERISA requirements
- Use a prudent, well-informed decision-making process

## Manage Plan Operations and Compliance

- Keep plan documents current
- Monitor eligibility, enrollment, and plan administration
- Conduct periodic compliance reviews and audits

# Fiduciary “Checklist”

## Monitor Plan Costs and Reasonableness

- Review total plan costs and expenses
- Assess whether fees are reasonable relative to services provided

## Identify and Correct Issues

- Address operational failures or compliance gaps
- Implement corrections promptly and document remediation steps

## Document Fiduciary Actions

- Maintain written records of meetings, reviews, decisions, and corrections
- Preserve an audit trail demonstrating a prudent process

# What does it take to be a good fiduciary?

### Governance and Plan Management

**Probably Doing OK Already**

- Administer to Plan Documents

**Need to Do More**

- Robust Fiduciary Management Process
- Manage Eligibility Correctly

### Vendor Selection and Oversight

**Probably Doing OK Already**

- Thorough Vendor Selection Process

**Need to Do More**

- Oversee and Audit Important Vendors

### Manage Plan Costs

**Probably Doing OK Already**

- Plan Analytics
- Claims cost management

**Need to Do More**

- Network Provider Reimbursement Benchmarking

# DOL Guide to Fiduciary Responsibilities under a Group Health Plan

<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/publications/understanding-your-fiduciary-responsibilities-under-a-group-health-plan>

UNDERSTANDING YOUR  
FIDUCIARY RESPONSIBILITIES  
UNDER A GROUP HEALTH PLAN



# Bob's 2025 Tax Advice

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## Your Federal Income Tax

For Individuals

Publication 17

For use in preparing  
**2025** Returns

# TAX GUIDE 2025



## FOR INDIVIDUALS

Get forms and other information faster and easier at:

- [IRS.gov](https://www.irs.gov) (English)
- [IRS.gov/Chinese](https://www.irs.gov/Chinese) (中文)
- [IRS.gov/Russian](https://www.irs.gov/Russian) (Русский)
- [IRS.gov/Spanish](https://www.irs.gov/Spanish) (Español)
- [IRS.gov/Korean](https://www.irs.gov/Korean) (한국어)
- [IRS.gov/Vietnamese](https://www.irs.gov/Vietnamese) (Tiếng Việt)

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Department of the Treasury Internal Revenue Service [www.irs.gov](https://www.irs.gov)

**Rewards.** If you receive a reward for providing information, include it in your income.

**Sale of home.** You may be able to exclude from income all or part of any gain from the sale or exchange of your main home. See Pub. 523.

**Sale of personal items.** If you sold an item you owned for personal use, such as a car, refrigerator, furniture, stereo, jewelry, or silverware, your gain is taxable as a capital gain. Report it as explained in the Instructions for Schedule D (Form 1040). You can't deduct a loss.

However, if you sold an item you held for investment, such as gold or silver bullion, coins, or gems, any gain is taxable as a capital gain and any loss is deductible as a capital loss.

**Example.** You sold a painting on an online auction website for \$100. You bought the painting for \$20 at a garage sale years ago. Report your gain as a capital gain as explained in the Instructions for Schedule D (Form 1040).

**Scholarships and fellowships.** A candidate for a degree can exclude amounts received as a qualified scholarship or fellowship. A qualified scholarship or fellowship is any amount you receive that's for:

- Tuition and fees to enroll at or attend an educational institution; or
- Fees, books, supplies, and equipment required for courses at the educational institution.

Amounts used for room and board don't qualify for the exclusion. See Pub. 970 for more information on qualified scholarships and fellowship grants.

**Payment for services.** In most cases, you must include in income the part of any scholarship or fellowship that represents payment for past, present, or future teaching, research, or other services. This applies even if all candidates for a degree must perform the services to receive the degree.

For information about the rules that apply to a tax-free qualified tuition reduction provided to employees and their families by an educational institution, see Pub. 970.

**Department of Veterans Affairs (VA) payments.** Allowances paid by the VA aren't included in your income. These allowances aren't considered scholarship or fellowship grants.

**Prizes.** Scholarship prizes won in a contest aren't scholarships or fellowships if you don't have to use the prizes for educational purposes. You must include these amounts in your income on Schedule 1 (Form 1040), line 8, whether or not you use the amounts for educational purposes.

**Sharing/gig economy.** A sharing economy is one in which assets are shared between individuals for a fee, usually through the Internet. For example, you rent out your car when you don't need it, or you share your wi-fi account for a fee.

A gig economy is one in which a short-term contract or freelance work is the norm, as opposed to a permanent job. For example, you drive for a ride-sharing service, or work as a fitness trainer, babysitter, or tutor.

Publication 17 (2025)

Generally, if you have income from sharing economy transactions, or you did gig work, you must include all income received whether you received a Form 1099-K, Payment Card and Third-Party Network Transactions, or not. See the Instructions for Schedule C (Form 1040) and the instructions for Schedule SE (Form 1040).

**State tax payments.** Do not include payments on your tax return made by states under legislatively provided social benefit programs for the promotion of the general welfare. To qualify for the general welfare exclusion, state payments must be paid from a governmental fund, be for the promotion of general welfare (that is, based on the need of the individual or family receiving such payments), and not represent compensation for services.

**Stolen property.** If you steal property, you must report its fair market value in your income in the year you steal it unless you return it to its rightful owner in the same year.

**Tips.** You may be eligible to take a deduction for qualified tips paid to you in 2025. You can deduct more than \$25,000 of these tips if your modified adjusted gross income is more than \$50,000 (\$300,000 if married filing jointly). To be eligible, you and/or your spouse who received the tips must have a valid SSN. You are married if you are married or you are a surviving spouse.

**Transporting school children.** Don't include in your income a school bus mileage allowance for taking children to and from school, if you aren't in the business of taking children to school. You can't deduct expenses for this transportation.

**Union benefits and dues.** Amounts due from your pay for union dues, assessments, contributions, or other payments to a union can't be excluded from your income.

**Strike and lockout benefits.** Benefits paid to you by a union as strike or lockout benefits, including both cash and the fair market value of other property, are usually included in your income as compensation. You can exclude benefits from your income only when they clearly show that the union intended the benefits to be gifts to you.

**Utility rebates.** If you're a customer of a utility company and you participate in the utility's energy conservation program, you receive on your monthly electric bill either:

- A reduction in the purchase price of electricity furnished to you (rate reduction).
- A nonrefundable credit against the purchase price of the electricity.

The amount of the rate reduction or nonrefundable credit isn't included in your income.

## 9.

### Individual Retirement Arrangements (IRAs)

What's New

family receiving such payments), and not represent compensation for services.

**Stolen property.** If you steal property, you must report its fair market value in your income in the year you steal it unless you return it to its rightful owner in the same year.

**Tips.** You may be eligible to take a deduction for qualified tips paid to you in 2025. You can't

- Your filing status is married filing separately, you lived with your spouse at any time during the year, and your modified AGI is more than zero. You can't make a Roth IRA contribution if your modified AGI is \$10,000 or more.

See [Can You Contribute to a Roth IRA](#), later.

Chapter 9 Individual Retirement Arrangements (IRAs)

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