



COBRA Administration Overview

Who must comply?

All employers who had 20 or more employees on 50% of its typical business days during the preceding calendar year. The only exceptions are 1) the federal government, and 2) church plans within section 414(e).

Determining employee account

Full-time and part-time employees count regardless of their eligibility for the group health plan(s). Part-time employees are counted as a fraction of a full-time employee. Example – if 40 hours is a benchmark for full-time status, a 20-hour employee would count as 0.5 employee, and a 10-hour employee would count as 0.25.

Common Ownership of Corporations

If two or more companies are commonly owned by an individual or individuals, the employees of these companies *may* have to be grouped together for purposes of COBRA. These rules are quite complex – refer to Section 607(4) of ERISA for specific answers.

Multiple Employer Plans

In a multiple employer plan (such as a plan through an association), each employer is looked at individually to determine if it must comply with COBRA.

Which plans must be offered?

COBRA applies to an employer's group health plan. A "group health plan" is defined as "a plan maintained by an employer to provide health care, whether directly or through insurance, reimbursement or otherwise." Health care includes "...the diagnosis, cure, mitigation, treatment, or prevention of disease, and any other undertaking for the purpose of affecting any structure or function of the body."

All the below plans meet the above definition and must be offered as COBRA coverage when applicable.

- Medical
- Dental
- Vision
- Prescription
- Flexible Spending Accounts (certain requirements must be met)
- HRAs

COBRA does NOT apply to:

- Life Insurance
- Disability
- HSAs

Plan Arrangements

Plans must be offered to qualified beneficiaries just as they are offered to active employees. Example, if the dental plan must be taken with the health plan to an active employee, both plans must be accepted under COBRA.

Flexible Spending Accounts

Only must be offered if the maximum payments for a year of COBRA equals or exceeds the maximum reimbursement available under the FSA. If the Qualified Beneficiary (QB) has a zero or over spent account balance, COBRA would NOT be offered.

Qualified Beneficiaries

A covered employee for COBRA purposes is any individual who was or is currently provided coverage under a group health plan.

A QB refers to individuals who are covered under the employer's group health plan the day before a COBRA qualifying event takes place.

This includes:

- the covered employee,
- covered spouse of the employee,
- covered dependent child of the employee, or
- any child born to or placed for adoption with the covered employee during the period of continuation coverage.

All qualified beneficiaries have the same rights under the plan as an active employee.

Qualifying Events and Coverage Periods

18-month qualifying events:

- Voluntary termination
- Involuntary termination
- Reduction of hours (strike, layoff, leave of absence) – FMLA has complex criteria, refer to COBRA manual at AWM

36-month qualifying events:

- Death of the employee
- Employee's Medicare Entitlement (only if someone loses coverage b/c of this)
- Divorce or Legal Separation
- Dependent Child Ceasing to be a Dependent

Employer's Reporting Responsibilities

- Voluntary termination
- Involuntary termination
- Reduction of hours
- Death of the employee
- Medicare Entitlement
- Employer's Bankruptcy

Employee or other Qualified Beneficiary's Responsibilities

This responsibility is given to the employee and/or QB in the general notice which also must explain how the information should be given and a timeframe.

- Divorce or legal separation
- Dependent child ceasing to be a dependent
- Social security disability
- Any secondary events (qualifying events that happen after the initial qualifying event)

Employer Required Notices and Timeframes

Must be sent first class mail to both the enrollee and spouse at last known address. Notification to spouse is deemed notification to all individuals residing with the spouse.

1.) General Initial Notice – sent to all new plan enrollees to acquaint them with the COBRA law, their notification obligations, and their possible rights to COBRA coverage in the future. The statute lists that this notice must be sent *"at the time of commencement of coverage under the plan."* DOL regulations clarify not later than:

1. 90 days from commencement of coverage, or
2. 90 days from plan having to comply to COBRA, or
3. The first date on which the plan administrator is required to furnish notice of a Qualifying Event. *

**If the Qualifying Event occurs within the first 90 days of coverage, the Election Notice will satisfy the General Notice requirement if it is sent by the 90th day.*

2.) Qualifying Event Election Notice – informs qualified beneficiaries of their right to elect COBRA. Plan administrators are required to notify all Qualified Beneficiaries of their COBRA rights within **14** days of the date they learn of the event. Specific DOL regulations on notice contents.

3.) Open Enrollment Notification – must be sent before the open enrollment period begins. The notice must list all available options and rates. Must be sent first class mail to all COBRA continuees. A COBRA continuee includes:

- Possible electees – individuals in their 60-day election period
- Electees – individuals who have elected but not yet paid
- Continuees – individuals who have elected and paid

4.) Notification of Plan Changes – ERISA requires that plan benefit changes, premium rate changes and other modifications to the plan be communicated to all plan participants, including COBRA Continuees. Plan changes should be sent *"within 60 days after the change has been adopted by the plan."* However, IRS regulations state that notification of rate changes must be provided to QBs **prior** to charging them the new rate.

5.) Notice of (Early) Termination of Coverage – this notice must be provided as soon as administratively practicable after the termination decision is made. The notice must explain why and when the coverage is being terminated. Example, non-payment of premium. The 2004 Final COBRA Regulations allows plans to include this notice with the HIPAA Certificate.

6.) Right to Convert Notice – to notify COBRA continuees of their right to elect a conversion option (if available). Must be sent within 180 days prior to COBRA expiration.

7.) Notice of Insignificant Premium Underpayment – notice sent if underpayment received. The regulations state *"a shortfall is not significant if it is no greater than the lesser of \$50 or 10 percent of the required amount."*

8.) Disclosure to Health Care Provider – The plan must inform the health care provider that the QB does not have current coverage but will have retroactive coverage if COBRA is elected and subsequently paid for by appropriate dates.

9.) Notice of Unavailability – the 2004 Final COBRA regulations require that employers generate this notice for events where the QB must inform the employer of

occurrences (listed earlier). The notice shall provide an explanation to the QB as to why he/she is not entitled to continuation coverage. Must be sent within **14** days of the plan administrator being informed of the occurrence.

10.) Extension Notification – should inform the QB of the new continuation time frame and monthly premium rates should a secondary event occur. This notice is *recommended* by the DOL, but not required.

COBRA Premiums

Employers can charge up to 102 percent of the “applicable premium” for continuation coverage. **Self-insured plans** – the statute lists two ways that an applicable plan can be determined. See COBRA manual for specifics.

Disability extensions – 150 percent can be charged from the 19th to the 29th month.

Election Period and Time Frames

- 30 days for the employer to report the event to the plan administrator
- 14 days for the plan administrator to notify QB
- 60 days for QB to elect COBRA coverage
- 45-day retroactive premium payment period

Once COBRA is elected,

- 30 day monthly premium payment period (example, for April premium – due on April 1st, but payment must be postmarked by April 30th)

Event Jan 1	Jan 31	Feb 14	April 15	May 30
30 days	14 days	60 days	45 days	30 day
Notice to plan administrator	Notice to QB	COBRA election period	Retroactive premium payment period	Monthly premium payment period

COBRA Penalties

- **IRS Penalty** - \$100 per day, per violation, for noncompliance with COBRA (\$200 per day if more than one beneficiary in a family).
- **ERISA Penalty** - \$110 per day, per QB, per violation – no family maximum
- **Claims Penalty** - “Making the person whole” by placing the QB in the exact financial condition he/she would have been in had he/she elected the most favorable coverage considering the expenses incurred.
- **Damages**
- **Attorney Fees**

Four Criteria of IRS Audit

1. Have the individuals responsible for COBRA compliance been **trained**?
2. Have **written instructions** for administering COBRA been prepared?
3. Has the program been **designed and updated** based on competent professional advice?
4. Is the program **monitored by independent auditors**?