



COBRA: A Continuing Conversation

Hays Companies
February 2020

 **Hays** PART OF THE BROWN & BROWN TEAM

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COBRA Overview

What is COBRA

Consolidated Omnibus Reconciliation Act of 1985

- Applicable to certain employers and employee organizations
 - Plans sponsored by unions may also be subject to COBRA.
- Applicable to group health care plans.
- It is the right to continue as a participant in the employer-sponsored group health care plan.
- Generally, the individual will receive the benefits he or she had the day before the qualifying event.

Employers Subject to COBRA

Applicable to employers with 20 or more employees on more than 50% of the typical business days during the previous calendar year.

- All common law employees must be counted, whether they have health coverage or not.
- Part-time employees are to be counted on a pro-rata basis.
- Self-employed individuals, independent contractors and directors are not counted.

Church plans and federal government plans are exempt from the requirement under COBRA.

- State employer plans are subject to the Public Health Services Act requirements which generally parallel COBRA requirements.
- A fully-insured plan may be subject to state continuation laws.

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Benefits Subject to COBRA

All group health plans maintained by an employer (as long as the employer is subject to COBRA).

- Group health plan:
 - A plan maintained by an employer or employee organization to provide **health care** to individuals who have an employment-related connection to the employer or employee organization or to their families.
 - Whether provided through insurance, reimbursement, or otherwise.
 - Maintained - any plan of, or contributed to by an employer or employee organization . . ." or, if there is no employer contribution, a plan under which identical coverage would not be available at the same cost, but for the individual's employment-related connection.

Individual insurance policies may also be subject to COBRA if maintained by the employer.

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Benefits Subject to COBRA

Group Health Care Plans.

- **Health care** means “diagnosis, cure, mitigation, treatment or prevention of disease, and any other undertaking for the purpose of affecting any structure or function of the body...”

- Medical (health insurance, telehealth, or e-visit plans)

- Dental

- Vision

- Prescription Drug Plans

- On-site medical clinics (except for first-aid care provided during working hours)

- Employee Assistance Plans (if they provide treatment)

- Health FSAs (special rules apply)

- Health Reimbursement Arrangements

Think “fix the body.”

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COBRA Premiums

COBRA Premiums generally may not exceed 102% of the applicable “premium” (cost to the plan) for similarly situated employees/beneficiaries.

- Fully insured plans:
 - Entire premium (employee’s and employer’s contribution) plus 2%.
- Self-insured plans:
 - Must use an actuarially determined rate or past cost method that reflects actual cost of the benefit across all participants.

COBRA premiums must be maintained for an entire pre-determined 12-month except:

- If the plan previously charged less than the maximum;
- During a period of disability extension as allowed by COBRA; or
- The Qualified Beneficiary (QB) changes coverage, such as during a period of open enrollment.

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Short Payment Rule

If payment is short by an amount that is “not significant,” employer must either:

- Accept payment as payment in full, or
- Notify QB of deficiency and allow 30 days from the date of the notification to correct deficiency.

“Not significant” is defined in the final COBRA regulations to be the lesser of \$50 or 10%.

Example: A QB owes \$345.00 for COBRA coverage and pays \$325.00. The payment is short an amount that is “not significant” because the amount of the shortfall (\$20) is less than \$50 and less than 10% (\$34.50). The short payment rule applies.

If the individual sent in only \$300.00 the shortfall (\$45) would be significant because \$45.00 is more than the lesser of \$50 or 10% (\$34.50). The short payment rule would not apply.

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Qualified Beneficiaries (QB)

Employee/Former Employee.

- Includes retirees, independent contractors, self-employed persons, partners and employees.
 - Covered because they are performing or have performed services for Employer.
- Legal Spouse (including same-sex spouses).
- Dependents.

Covered on Plan Immediately Preceding Qualifying Event.

- Newly-acquired dependents added to the plan after a QE are also QBs.

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QB Rights under COBRA

Must be offered coverage that is the same as the coverage in place before the qualifying event.

QBs have same rights as similarly-situated active employees.

- Open enrollment rights.
- HIPAA special enrollment rights.
- Plan Modifications – if employer changes group health plan for active employees, this change also applies to COBRA QBs.

Each QB has an independent right to elect COBRA.

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Qualifying Events

Employee Term. Reduction in Hours

Qualifying Event	<ul style="list-style-type: none"> Termination of Employment (other than for gross misconduct)⁽¹⁾ Reduction in Hours Leave of Absence (non-FMLA) Temporary Layoff Failure to return to active employment after FMLA leave⁽²⁾
To Whom Continuation Applies	Employee, spouse and dependents
Maximum Coverage Period	18 months from qualifying event
Maximum Cost	102% of rate

⁽¹⁾There is no specified definition of gross misconduct in the COBRA regulations, and courts have not established consistent standards. Seek legal advice before denying COBRA coverage

⁽²⁾COBRA continuation must be extended even if employee did not maintain coverage during FMLA leave

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Disability Extension

How is Disability Defined?	Determined by Social Security Administration
Who must be disabled?	Employee, spouse or dependent
When must disability occur?	Before, on or within 60 days of the qualifying event
To Whom Continuation Applies	Employee, spouse and dependents
Maximum Coverage Period	29 months from the date of event (18 months plus 11-month extension)
Requirements for Extension	QB must provide to Plan Administrator the SSA's determination of total disability during first 18 months of COBRA coverage, and within 60 days of receipt of determination letter
Maximum Cost	102% Mos. 1-18 150% Mos. 19-29

Divorce or Legal Separation	
Qualifying Event	Divorce or Legal Separation (in states recognizing legal separation)
To Whom Continuation Applies	Former spouse and dependents losing eligibility for coverage
Maximum Coverage Period	36 months from the date of event
Notice Requirements	Within 60 days of qualifying event, qualified beneficiary must notify Plan Administrator
Maximum Cost	102% of premium

Death of Employee	
Qualifying Event	Death of Employee
To Whom Continuation Applies	Former spouse and dependents losing eligibility for coverage
Maximum Coverage Period	36 months from the date of event
Maximum Cost	102% of premium

Dependent Reaching Age Limit

Qualifying Event	Dependent no longer eligible for coverage due to reaching maximum age under Plan
To Whom Continuation Applies	Dependents losing eligibility for coverage
Maximum Coverage Period	36 months from the date of event
Notice Requirements	Within 60 days of qualifying event, qualified beneficiary must notify Plan Administrator
Maximum Cost	102% of premium

Other Qualifying Events

Covered employee's Medicare entitlement (if it causes a loss of group health plan eligibility).

- Typically applicable to retiree plans.

Employer bankruptcy (retiree plans only).

Anticipation rule (coverage lost due to anticipated divorce or lay-off).

Increase in the premium or contribution that must be paid by a covered employee, or the spouse or dependent child as a result of a qualifying event.

Multiple Qualifying Events

Applicable to spouses and dependents.

When a 36-month event occurs during an 18-month COBRA continuation period, the affected QB(s) may extend coverage for up to a total of 36 months from the original qualifying event date.

- Example: divorce after an employee's termination - Ex-spouse may extend COBRA to a total of 36 months from the original qualifying event date.

A termination of employment following a reduction of hours that previously resulted in a Qualifying Event is considered a single 18-month event.

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Notices

General Notice

Also referred to as an initial COBRA notice.

- General notice must be provided within 90 days after coverage begins.
- Must be written to be understood by average plan participant.
- Single notice may be provided to covered employee and spouse at same address.

The DOL model notice may be obtained at:
<https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra>

Once you are at the website click on "Regulations." The model is downloaded (also available in Spanish).

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Delivery of General Notice

Notices must be provided to all plan participants in a manner in that is reasonably anticipated to reach all participants.

- First class mail, addressed to the employee and spouse (if covered), to the last known address will meet this requirement.
- A single notice to both the employee and spouse (if covered) is sufficient as long as the spouse resides at the same location as the covered employee.

Electronic delivery is also acceptable if it meets the standards of §2520.104b-1(c) of the delivery requirements.

- The employee and/or covered spouse will need to prospectively agree to electronic notification.

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Election Notice

Election notice must be provided to QBs within 14 days after plan administrator is notified of the qualifying event.

When employer is plan administrator, notice must be provided within 44 days of later of qualifying event or loss of coverage.

Allow 60-days for election period.

- From the **later of** the qualifying event, the loss of coverage date, or the date the notice is "provided."

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Delivery of Election Notice

First class mail, addressed to the employee and spouse (if covered), to the last known address will meet this requirement.

- A single notice to both the employee and spouse (if covered) is sufficient as long as the spouse resides at the same location as the covered employee.

Electronic delivery is also acceptable if it meets the standards of §2520.104b-1(c) of the delivery requirements.

- The employee and/or covered spouse will need to prospectively agree to electronic notification.

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Notice of Unavailability

Must give notice of COBRA ineligibility within 14 days after receipt of notice of qualifying event.

Where employer is plan administrator, must give notice within 44 days of later of qualifying event or coverage loss.

Plan administrator must notify individual of reason for COBRA ineligibility.

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Notice of Early Termination

Must notify QBs when continuation coverage terminates before end of maximum coverage period for such qualifying event.

Must notify as soon as *practicable*.

Must contain the following information:

- Reason for early termination.
- Date of coverage termination.
- Any conversion rights available.

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Reasons for Early Termination

1. QB fails to make timely payment.
2. QB becomes covered by another group health plan after the COBRA election.
3. QB first becomes entitled to Medicare (Part A or Part B) after the date of the COBRA election.
4. Employer ceases to provide any group health plan.
5. QB ceases to be disabled according to SSA.

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Requirements for Plan Sponsors

The following, if they give rise to a loss of coverage, are qualifying events that must be reported by the employer:

- The death of the covered employee.
- The employee's termination (for other than by reason of gross misconduct).
- A reduction in hours of the covered employee.
- The Medicare entitlement of the employee.
- Chapter 11 bankruptcy.

Timing - no later than 30 days after the date on which a qualified beneficiary loses coverage under the plan due to the qualifying event.

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Requirements for Employees/QBs

Covered employees and QBs are generally required to notify plan administrator within 60 days or later of:

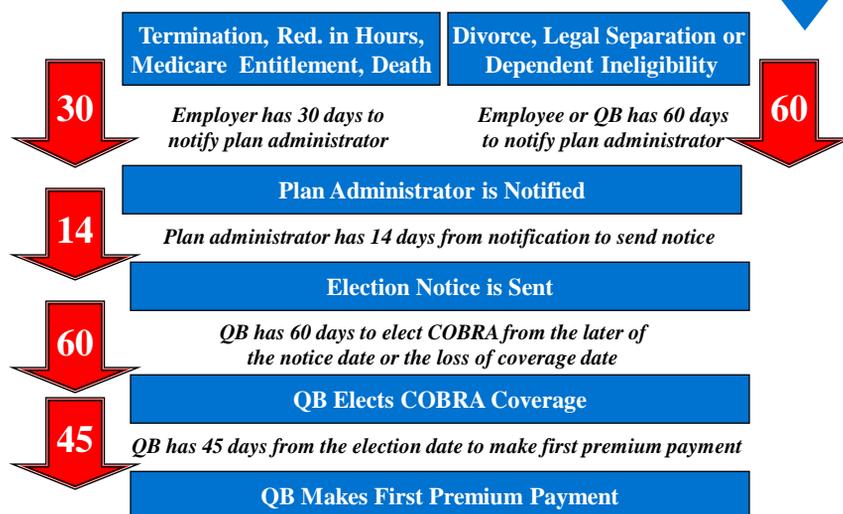
- Divorce or legal separation of the covered employee;
- A covered dependent ceasing to be dependent under the terms of the plan
- Qualifying or second qualifying event;
- Loss of coverage; or
- Date they were first notified of notice obligations.

Reasonable procedures established by plan administrator must be followed.

QBs determined to be disabled by SSA are generally required to notify plan administrator within 60 days of receipt of determination and before end of original 18-month continuation period.

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The COBRA Timeline



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Special Rule for Medicare

There is a potential extension of coverage for the spouse of an employee that is enrolled in Medicare and the employer's group health care plan.

- If the employee has **Medicare prior to COBRA**, and has an 18-month COBRA event within 18 months after Medicare entitlement, the spouse must be allowed to have COBRA for up to 36-months after the employee's Medicare entitlement date.
- If the employee has ***elected COBRA and then enrolls in Medicare***, the spouse remains subject to the 18-month COBRA coverage period (because active employees and spouses would not lose coverage due to Medicare entitlement).

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Special Issues

Health FSAs and HRAs

Health FSA participants are offered COBRA if:

- The total amount of salary reductions less reimbursed expenses prior to the qualifying event results in an unspent account balance; and
- The continuation period for a Health FSA is limited to the remainder of the plan year.

Health Reimbursement Arrangement (HRA).

- Do not have the same limitations as health FSAs – all participants must be offered COBRA for their HRA, regardless of the account balances.

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Health FSA Examples

Health FSA “overspent” Situation when HFSA need not be offered under COBRA:

- Employee elects benefit of \$1200 and incurs \$1000 in claims in January
- Employee terminates 1/31
- Maximum benefit available for remainder of plan year is \$200 (\$1,200 - \$1,000)
- Maximum amount the plan could require as payment is \$1122 (\$102/month X 11 months = \$1,122)
- Employer need not offer HFSA under COBRA

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Health FSA Examples

Health FSA “underspent” Situation when HFSA must be offered under COBRA:

- Employee elects annual HFSA benefit of \$1200 and has \$600 in reimbursable claims.
- Employee terminates 10/31
- Maximum benefit available for remainder of plan year is \$600
- Maximum amount the plan could require as payment is \$204 (\$102/month X 2 months)
- Employer must offer HFSA under COBRA

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Impact of FMLA

FMLA leave is not a qualifying event.

- Employees cannot lose eligibility for coverage during FMLA (even if coverage is voluntarily dropped during FMLA).

COBRA rights arise at end of leave, or

- At the point the employee gives unequivocal notice of intent not to return.

Note: employee, spouse, or dependent child must have been covered the day before the first day of FMLA, or become covered during the FMLA leave.

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USERRA

Uniform Service Employment and Reemployment Rights Act of 1994.

- Applies to all group health plans – any size.
- 24 months of continuation if group coverage ends.
- If service is for 30 days or less, charge only the employee share.

Comply with COBRA notice rules and you are generally complying with USERRA.

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COBRA and State Law

COBRA is a federal law that applies to self-insured and fully-insured plans.

- State continuation requirements apply to full-insured plans.

When COBRA and state continuation laws overlap, apply the rule that affords the individual the most protection.

Example: COBRA provides an ex-spouse up to 36-months of continuation in the event of loss of coverage due to divorce.

- Some state laws applicable to fully-insured plans extend this continuation right beyond 36-months.
- Provide the COBRA rights and the extended state protection.

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Thank you!

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