

## HR SOLUTIONS

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# COBRA; WHAT IS IT AND HOW DO EMPLOYERS COMPLY?

## What is COBRA?

Consolidated Omnibus Budget Reconciliation Act (COBRA)<sup>1</sup> health benefit provisions was passed in 1986. The law amended the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code and the Public Health Service Act to require most group health plans to provide a temporary continuation of group health coverage that otherwise might be terminated. The maximum period of continuation coverage is between 18 and 36 months based on the qualifying event and participant.

## Which Companies Must Comply?

Federal COBRA generally applies to all private sector employers that have at least 20 or more employees for more than 50 percent of their typical business days in the previous year, and maintains a group health plan. COBRA also applies to plans sponsored by state and local governments. Full and part-time employees are included when determining total employee numbers. Part-time employees count as a fraction of a full-time employees based on the number of hours worked against equivalent hours required for full-time status.

Employers who maintain a group health plan but have less than 20 employees may be subject to state continuation, often referred to as "mini COBRA". Many states mirror federal COBRA notification requirements but have different coverage period maximums.

## Who is Eligible?

An employee, employee's spouse or child who experiences a loss of coverage event (qualifying event) may be eligible to continue coverage under the employer's health plan. Such events include:

### Covered Employee

- termination or
  - reduction in the hours of a covered employee's employment.
- (For reasons other than gross misconduct)

### Spouse or Dependent Child of Covered Employee

- termination of covered employee's employment or
- reduction in the hours of a covered employee's employment,  
(For reasons other than gross misconduct)
- death of a covered employee,
- covered employee becoming entitled to Medicare, or
- divorce or legal separation of the spouse from covered employee.

### Dependent Child of Covered Employee

- child's loss of dependent status under the plan.

## Which Benefits are Included?

A group health plan is any employer established or maintained plan providing employees or their families with medical care. Group plans include:

- medical
- dental
- vision
- some Cafeteria (125) plans

Disability and Life insurance plans are not COBRA eligible.

## How do You Administer COBRA?

COBRA administration can be time consuming and complicated. Employers have two options available to them. They can elect to self-administer their COBRA program or they can elect to use one of many services available. COBRA participants are required to pay 100% of the premium and can be charged up to an additional 2% for administration fees.

Regardless of which method you use, it is critical certain steps take place within a specific time frame. Companies need to have sound policies and procedures in place, to ensure all the correct steps are taken and that they are accomplished within the required timeframe.

### Using a COBRA Provider:

Even if companies use an outside COBRA administrator, they need to establish the following:

- ✓ A policy for employees to notify HR when changes occur in their personal information or address.
- ✓ Upon notification of or becoming aware of an event, validate employee contact and address.
- ✓ Track and notify provider of all new hires (within 60 days of benefits eligibility), terminations, death, reduction in hours, employee becomes Medicare eligible (within 30 days of event), or other qualifying events (within 60 days or upon notification of event).
- ✓ Track and notify benefit provider of coverage cancellation dates. This may be the actual date of the event or the end of the month following the event date, based on your plan.
- ✓ Track COBRA election notifications from COBRA provider to be sure they are reenrolled with benefit providers.
- ✓ Review all provider statements to ensure participants reflect on the statement as enrolled, terminated, or active COBRA participant and reflect the correct date of change.

#### **Employer Administered:**

*These steps will help you self-administer COBRA:*

- ✓ Establish a policy for employee and department notification of changes in personal information.
- ✓ Upon notification of or becoming aware of an event, validate employee contact and mailing information.
- ✓ Notify all new hire employees of their COBRA rights within 90 days of benefit eligibility date. This notification requirement can be met by either sending out a general notice of COBRA rights or an SPD document, if the SPD includes COBRA rights language. This helps transfer liability to the employee and dependents to let the administrator know of qualified events such as divorce or child losing coverage.
- ✓ For terminations, reduction in hours, death, or covered member becomes eligible for Medicare, the employer must notify benefit provider of the termination date of coverage (within 30 days of event).
- ✓ Send out qualifying event notice and COBRA election application to the employee and their dependents as soon as possible, but no later than 14 days from event, mailing them to their last known address.
- ✓ For other events like divorce, legal separation, or adult child becomes ineligible for coverage, the employee must notify benefit provider and the employer of change in coverage or termination of coverage as soon as possible, but no later than 60 days from event.
- ✓ Establish a process for tracking notifications for proof of compliance and follow-up. It is suggested notifications be sent by registered mail.
- ✓ Track open COBRA election notices. Election notice must be given to qualified individuals within 60 days from date of notification, to elect coverage. If the election notice is not received within 60 days, the election period closes. Make note of election date

expirations and retain this information in employee file.

- ✓ If an election is made, the eligible participant has an additional 45 days to make payment for past month's premium back to date of lost coverage. All subsequent months' premiums are due on the 1<sup>st</sup> day of the month. However, the participant has a 30 day grace period in which to make the payment without risk of cancellation of coverage
- ✓ Upon payment of initial premiums, notify providers to reenroll participant on COBRA with effective date of original date of coverage termination.
- ✓ Notify participant of enrollment, subsequent payment due date, payment process, and administrator contact information.
- ✓ Review all provider statements to ensure participants reflect on statement as enrolled, terminated, or active COBRA participant and reflect the correct date of change.
- ✓ Track monthly premium payments from participants for timeliness (received within the 30 day grace period) and amount (validate full amount of premium, plus admin fee, if applicable, was received). It is recommended to go by the date mailed, when reviewing if payment arrived within the grace period. If someone is late, terminate them from coverage and send them a notice of termination.
- ✓ Other notifications that may be needed or should be considered based on specific situations include:
  - Notice of Unavailability of COBRA
  - Notice of Early Termination of Coverage
  - Short Pay Notice (full amount not received)
  - Exhaustion of COBRA Benefits
  - Conversion Options
  - Change in Plan Rates
- ✓ Promptly notify provider of cancellation of coverage.

Complying with COBRA rules and notification requirements is essential to avoid costly fines or even worse, medical liability. Ensure your COBRA administration practices are current and consistent.

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*References:*

1. <http://www.dol.gov/ebsa/publications/cobraemployer.html#Footnotes>
2. <http://www.dol.gov/ebsa/publications/cobraemployer.html>

#### **COBRA Questions or Assistance**

Contact HR Service, Inc. for assistance with COBRA questions, concerns, or compliance assistance. Call (801) 685-8400 or email: [Ken@HRServiceInc.com](mailto:Ken@HRServiceInc.com). Visit us on-line at: [www.hrserviceinc.com](http://www.hrserviceinc.com).