theolsongroup
Benefits Team

COBRA FAQ

COBRA

What is COBRA continuation coverage?

The **C**onsolidated **O**mnibus **B**udget **R**econciliation **A**ct (COBRA) health benefit provisions amend the Employee Retirement Income Security Act, the Internal Revenue Code and the Public Health Service Act to require group health plans to provide a temporary continuation of group health coverage that otherwise might be terminated due to a life event. These life events are also called "qualifying life events" (QLE). After a QLE, COBRA continuation coverage must be offered to each person who is a "qualified beneficiary." Employees and their dependents would become qualified beneficiaries if coverage under the Plan is lost because of the QLE.

What group health plans are subject to COBRA?

The law generally applies to all group health plans maintained by private-sector employers with 20 or more employees, or by state or local governments. The law does not apply to plans sponsored by the Federal Government or by churches and certain church-related organizations. In addition, many states have laws similar to COBRA, including those that apply to health insurers of employers with less than 20 employees (sometimes called mini-COBRA).

Who is entitled to continuation coverage under COBRA?

In order to be entitled to elect COBRA continuation coverage, your group health plan must be covered by COBRA; a qualifying event must occur; and you must be a qualified beneficiary for that event.

Plan Coverage – COBRA covers group health plans sponsored by an employer (private-sector or state/local government) that employed at least 20 employees on more than 50 percent of its typical business days in the previous calendar year. Both full- and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of a fulltime employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full time.

Qualifying Events – Qualifying events are events that cause an individual to lose his or her group health coverage. The type of qualifying event determines who the qualified beneficiaries are for that event and the period of time that a plan must offer continuation coverage. COBRA establishes only the minimum requirements for continuation coverage. A plan may always choose to provide longer periods of continuation coverage.

The following are qualifying life events for covered employees if they cause the covered employee to lose coverage:

- Termination of the employee's employment for any reason other than gross misconduct; or
- Reduction in the number of hours of employment.

The following are qualifying life events for the spouse and dependent child of a covered employee if they cause the spouse or dependent child to lose coverage:

- Termination of the covered employee's employment for any reason other than gross misconduct;
- Reduction in the hours worked by the covered employee;
- Covered employee becomes entitled to Medicare;
- Divorce or legal separation of the spouse from the covered employee; or
- Death of the covered employee.

In addition to the above, the following is a qualifying event for a dependent child of a covered employee if it causes the child to lose coverage:

- Loss of dependent child status under the plan rules. Under the Affordable Care Act, plans that offer coverage to children on their parents' plan must make the coverage available until the adult child reaches the age of 26.

Qualified Beneficiaries – A qualified beneficiary is an individual covered by a group health plan on the day before a qualifying event occurred that caused him or her to lose coverage. Only certain individuals can become qualified beneficiaries due to a qualifying event, and the type of qualifying event determines who can become a qualified beneficiary when it happens. A qualified beneficiary must be a covered employee, the employee's spouse or former spouse, or the employee's dependent child. In certain cases, involving the bankruptcy of the employer sponsoring the plan, a retired employee, the retired employee's spouse or former spouse, and the retired employee's dependent children may be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during a period of continuation coverage is automatically considered a qualified beneficiary. An employer's agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries.

How long do I have to elect COBRA coverage?

If you are entitled to elect COBRA coverage, you must be given an election period of at least 60 days (starting on the later of the date you are furnished the election notice or the date you would lose coverage) to choose whether or not to elect continuation coverage. Each of the qualified beneficiaries for a qualifying event may independently elect COBRA coverage. This means that if both you and your spouse are entitled to elect continuation coverage; you each may decide separately whether to do so. The covered employee or spouse must be allowed to elect on behalf of any dependent children or on behalf of all of the qualified beneficiaries. A parent or legal guardian may elect on behalf of a minor child.

How long does COBRA coverage last?

COBRA requires that continuation coverage extend from the date of the qualifying event for a limited period of 18 or 36 months. The length of time depends on the type of qualifying event.

Qualifying Life Event	Max Period of COBRA Coverage
Termination (for reasons other than gross misconduct) or reduction in hours of employment	18 months
Employee enrollment in Medicare	36 months
Divorce or legal separation	36 months
Death of employee	36 months
Loss of "dependent child" status under the plan	36 months

When the qualifying event is the end of employment or reduction of the employee's hours, and the employee became entitled to Medicare less than 18 months before the qualifying event, COBRA coverage for the employee's spouse and dependents can last until 36 months after the date the employee becomes entitled to Medicare. For example, if a covered employee becomes entitled to Medicare 8 months before the date his/her employment ends (termination of employment is the COBRA qualifying event), COBRA coverage for his/her spouse and children would last 28 months (36 months minus 8 months).

Flexible Spending Accounts (FSAs) & COBRA

Underspent health care FSAs are federal COBRA eligible but dependent care FSAs are not. Only underspent health care FSAs are required to be offered via federal COBRA but any offer for a HFSA is only for the remainder of the plan year. The COBRA administrative vendor, if not administered in house, should be able to confirm how to properly report a health care FSA termination for COBRA purposes which can vary if they are also the FSA administrator or if that is a separate vendor.

All unclaimed funds, including a rollover/carryover amount (if applicable) are eligible under COBRA for a health care FSA. For those who have "underspent" health care FSA accounts (more unclaimed funds than payroll contributions) at time of termination, COBRA must be offered, regardless of whether those funds are from the employee or employer. Although the COBRA administrator should be made aware of the existence of all terminating employees' Health Care FSAs to see if it should be offered under continuation provisions, COBRA coverage does not need to be offered to beneficiaries who have "overspent" (claimed more than they have contributed via payroll) on their accounts at the time of the termination or other qualifying event.

Employees who elect COBRA continuation coverage may only make after-tax contributions to the FSA account once they have ceased receiving a paycheck. In addition, employers may require a QB to pay an additional 2% administrative fee. As an example, an employee who makes an annual FSA election of $2,400 and terminates employment on June 30 will have contributed $1,200 ($200/month) at the time of termination. For each month of continued coverage, the QB should send $204 (102% of the applicable premium/contribution) to the employer. Under the limited COBRA obligations scenario, a QB’s participation ceases at the end of the plan year in which the qualifying event occurred or when he or she fails to submit premium payment.

Where can I go if I have questions or want more information on COBRA?

If you need further information on your rights under a private sector plan, or about ERISA generally, contact the Employee Benefits Security Administration (EBSA) electronically at askebsa.dol.gov or call toll free 1-866-444-3272.