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# COBRA

## Continuation Coverage *and* *the* Small Employer Exception

In 1985, Congress passed the Consolidated Omnibus Budget Reconciliation Act (hence the acronym “COBRA”). The COBRA law, which was signed by President Ronald Reagan, amended the Employee Retirement Income Security Act of 1974 (“ERISA”), the law that governs retirement plans and health plans and protects employees and their families when those plans are offered in conjunction with employment. COBRA accomplished many things, but perhaps the most significant and enduring provisions of the law are the parts that deal with the continuation of health insurance and other welfare benefits after leaving employment or experiencing certain other qualifying life events. More specifically, the law provided that most employees and their dependents must be allowed to continue participating in the company health plan long after they have separated from employment or experienced certain life events, and their employers (and the insurance companies and plan administrators) must treat them as if they are still actively affiliated with the employer.

### What is COBRA continuation coverage?

The COBRA law requires group health plans to offer continuation coverage to covered employees, former employees, spouses, former spouses, and dependent children when they would otherwise lose coverage due to separation of employment or another qualifying event. There are a few exceptions to COBRA’s continuation requirements (e.g., fraud, gross misconduct); but generally, if a covered person loses group health insurance eligibility, COBRA allows that person to continue the group insurance coverage (at their own expense) for up to 36 months.

Note: It is a common misconception that someone who elects COBRA coverage is no longer affiliated with the employer or is no longer a potential risk to the employer’s health plan. That is incorrect. COBRA merely allows the individual to continue their group health coverage as an eligible plan participant despite an event that would otherwise disqualify them and cause them to lose coverage. In other words, with the exception that these individuals are responsible to pay their own premium, former active plan participants are treated the exact same way as if they were still covered as or through an active and eligible employee.

## **Who is eligible for COBRA?**

The general rule is that COBRA applies to health plans that are maintained by employers that employed at least 20 employees on more than 50% of its typical business days in the previous calendar year. When counting employees, both full-time and part-time employees are included, with part-time employees counting as a fraction of a full-time employee. For example, if full-time work is considered to be 40 hours per week, a 20-hour per week employee is counted as one-half of an employee. COBRA also applies to plans sponsored by state and local governments, but it does not apply to plans sponsored by the federal government or by churches.

Note: Each qualified beneficiary has an independent COBRA right and can elect COBRA continuation coverage regardless of whether the (former) employee elects COBRA. Additionally, each COBRA beneficiary is free to terminate their individual coverage whenever they want without affecting the COBRA status of the other family members.

## **How long does COBRA coverage last?**

The general answer to this question is that COBRA coverage can be elected for up to 18 months. The specific rule, however, is that duration of one's COBRA coverage depends on the nature of the qualifying event (*i.e.*, the reason the plan participant lost coverage). When the qualifying event is the covered employee's reduction of hours or termination of employment (except for gross misconduct), all qualified beneficiaries are independently entitled to continue their group coverage for up to 18 months. If the covered employee has died, divorced, or become entitled to Medicare, the employee's spouse and dependents are allowed to continue their coverage for up to 36 months. A dependent child who has reached the limiting age is also allowed to remain on the plan for up to 36 months. Additionally, COBRA provides that the 18-month coverage limitation can be extended for an additional 11 months (up to 29 months) in the event of disability.

## **How much does COBRA coverage cost?**

I often hear people complain about the prohibitive cost of COBRA insurance coverage. In reality, COBRA continuation coverage costs the same as what was being charged before the separation from employment (plus an additional 2% administrative allowance). The reason for the sticker shock, however, is that the employee and/or his or her dependents are now responsible to pay the entire premium amount without employer contribution. In most cases, these individuals never knew or appreciated the value of the premium that was being paid by their employer, so they incorrectly believe the cost of the COBRA coverage has skyrocketed or they are being gouged. (It should be noted that in situations involving a disabled qualified beneficiary, premium can be as high as 150% of the premium charged to an active participant.)

## **What is the Small Employer Exception to COBRA?**

As you can see from the aforementioned eligibility rule, certain group health plans and small employer plans are exempt from the COBRA law. For purposes of the small employer plan exception, a small employer is one that normally employed fewer than 20 common law employees on a typical business day during the preceding calendar year. It is important to note this determination is based on the number of employed employees, not the number of participants in the health plan.

## **Acknowledgment of Stolen Material**

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