

U.S. DEPARTMENT OF LABOR
EMPLOYEE BENEFITS SECURITY ADMINISTRATION



HEALTH BENEFITS UNDER COBRA

***This draft is current as of March 2018. Although EBSA makes every effort to assist the public, these slides are not intended to be, and should not be construed as, legal advice. They are also not a substitute for any regulations or interpretive guidance issued by EBSA. ***



COBRA

CONSOLIDATED OMNIBUS BUDGET
RECONCILIATION ACT

THE LAW

COBRA amended:

- ERISA (Sections 601 – 608)
- Internal Revenue Code (IRC § 4980B)
- Public Health Service Act



WHAT IS COBRA CONTINUATION COVERAGE?

- ◎ It is continuation coverage that group health plans are required to offer to qualified beneficiaries (i.e., employees, spouses, dependents) when group health plan coverage would otherwise be lost due to a qualifying event (such as termination or reduction of hours of employment, divorce, death of covered employee, etc.).

WHO IS ENTITLED TO COBRA?

An individual will be entitled to COBRA if 3 basic requirements are met

1. Your group health plan is subject to COBRA (plan coverage)
2. A qualifying event occurs (QE)
3. They are a qualified beneficiary (QB)

PLANS SUBJECT TO COBRA

Is your health plan subject to COBRA?

Yes, if it is:

- A group health plan;
- Sponsored by a private sector
- That employed at least 20 employees in previous calendar year



PLAN COVERAGE

GROUP HEALTH PLAN

⦿ An arrangement established or maintained by an ER to provide EEs or their families with medical care.

■ Arrangement

- Insurance
- HMO
- From ER's assets

■ Medical Care

- Physician care
- Hospital Care (inpatient and outpatient)
- Surgery and other major medical benefits
- Prescription drugs
- Dental and vision care



PLAN COVERAGE SPONSORED BY AN EMPLOYER

COBRA amended ERISA to cover group health plans sponsored by:

- ⦿ Private-sector ER
- ⦿ Employee organizations (labor unions)*

*Special rules may apply

Other laws may have similar provisions for group health plans sponsored by:

- ⦿ Federal government
- ⦿ State or local governments

PLAN COVERAGE EMPLOYED AT LEAST 20 EES

- ⦿ 20 Employees
 - Full-time
 - Part-time



- ⦿ More than 50% of its typical business days
- ⦿ In the previous calendar year

WHO IS ENTITLED TO COBRA?

An individual will be entitled to COBRA if 3 basic requirements are met

- ✓ 1. Your group health plan must be subject to COBRA (plan coverage)
 - a. Group health plan
 - b. Sponsored by a private sector ER
 - c. Employed 20 or more EEs in prior calendar yr.
- 2. A qualifying event must occur (QE)
- 3. They are a qualified beneficiary (QB)

QUALIFYING EVENTS

What is a qualifying event?

- ⦿ A qualifying event (QE) is an event specified in COBRA that causes an individual to lose group health care coverage.
- ⦿ The QE determines who the qualified beneficiaries (QBs) are for that event and the period of time that the plan must offer continuation coverage.

QUALIFYING EVENTS

- ◉ QEs for Covered Employees (if the event causes the covered EE to lose coverage)
 - ◉ Voluntary or involuntary termination of EE's employment for any reason other than "gross misconduct"
 - ◉ Reduction of EE's hours of employment

QUALIFYING EVENTS

- QEs for **Spouse** and **Dependent Child** of covered EE (if event causes the spouse or dependent child to lose coverage)
 - Termination of covered EE's employment for any reason other than "gross misconduct"
 - Reduction in hours worked by covered EE
 - Covered EE becomes entitled to Medicare
 - Divorce or legal separation of spouse from covered EE
 - Death of covered EE
- In addition to above, a QE for a **Dependent Child**
 - Loss of "dependent status" under the plan rules

WHO IS ENTITLED TO COBRA?

An individual will be entitled to COBRA if 3 basic requirements are met

- ✓ 1. Your group health plan must be subject to COBRA (plan coverage)
- ✓ 2. A qualifying event must occur (QE)
 - An event specified under COBRA that cause an individual to lose group health care coverage.
3. They are a qualified beneficiary (QB)

QUALIFIED BENEFICIARIES

- A QB is an individual who was covered by a group health plan on the day before the QE occurred that caused loss of coverage
 - Covered EE
 - Their spouse (or former spouse)
 - Their dependents
- In certain cases involving Chapter 11 bankruptcy of the ER, QBs also may include
 - Covered retiree
 - Their spouse (or former spouse)
 - Their dependents

QUALIFIED BENEFICIARIES

- ⦿ A QB can also be
 - Any child born or placed for adoption with a covered employee during a period of continuation coverage
 - Agents, independent contractors, and directors who participate in the group health plan

WHO IS ENTITLED TO COBRA?

An individual will be entitled to COBRA if 3 basic requirements are met

- ✓ 1. Your group health plan must be subject to COBRA (plan coverage)
- ✓ 2. A qualifying event must occur (QE)
- ✓ 3. They are a qualified beneficiary (QB)
 - Covered EE
 - Covered EE's spouse (or former spouse) or dependent of EE

NOTICE AND ELECTION PROCEDURES

Notice Procedures

- ◎ Summary Plan Description (SPD)
(given w/in 90 days after EE becomes a participant or w/in 120 days plan is first subject to ERISA's reporting and disclosure provisions)
 - COBRA rights described
 - Types of benefits under the plan
 - Rights of Ps and Bs
 - How the plan works

NOTICE AND ELECTION PROCEDURES

Notice Procedures (cont.)

- ◉ COBRA General Notice (Model Notice)
(from plan to QB w/in 90 days of coverage)

Information included in General Notice

- ◉ Name of plan, and address and telephone number of someone who can be contacted for more plan and COBRA information
- ◉ Description of COBRA rights
- ◉ Explanation of what a QB must do to notify plan of a QE or disabilities
- ◉ Explanation of the importance of keeping the plan administrator informed of addresses of the Ps and Bs

NOTICE AND ELECTION PROCEDURES

Notice Procedures (cont.)

- ◉ COBRA Qualifying Event Notices
 - ◉ Employer (30 days)
 - Termination or reduction of hours
 - Death of covered EE
 - Bankruptcy of ER

 - ◉ Covered EE or other QB (60 days)
 - Divorce
 - Legal separation
 - Child's loss of dependent status under the plan

NOTICE AND ELECTION PROCEDURES

Notice Procedures (cont.)

- COBRA Election Notice (Model Notice)
(must be provided to QBs w/in 14 days after plan administrator receives notice of QE)

Information in Election Notice includes:

- Name of plan, and address and telephone number of someone who can be contacted for more plan and COBRA information
- How to elect coverage
- What will happen if coverage is not elected
- What coverage is available, for how long, and how it can extend for disability or second QE
- Premium payment requirements, including due dates and grace periods

NOTICE AND ELECTION PROCEDURES

Notice Procedures (cont.)

- ◉ COBRA Notice of Unavailability of Continuation Coverage
 - ◉ From plan denying COBRA coverage to individual who requested coverage (or extension of coverage)
- ◉ COBRA Notice of Early Termination of Continuation Coverage
 - ◉ From plan describing why it is ending COBRA benefits early

NOTICE AND ELECTION PROCEDURES

Election Procedures

- ⦿ Each QB has 60 days to elect COBRA from the later of:
 - ⦿ Date coverage is actually lost; or
 - ⦿ Date QB is furnished an Election Notice
- ⦿ Each QB can independently elect COBRA
- ⦿ A QB can waive COBRA and later revoke the waiver as long as it is done before the end of the election period

DURATION OF CONTINUATION COVERAGE

<u>Qualifying Event</u>	<u>Beneficiary</u>	<u>Coverage</u>
■ Termination Reduction of hours	Employee Spouse Dependent Child	18 months*
■ Employee entitled to Medicare	Spouse Dependent child	36 months
■ Divorce or legal separation		
■ Death of covered employee		
■ Loss of "dependent child" status	Dependent child	36 months

* In certain circumstances, QBs entitled to 18 months of continuation coverage may become entitled to a disability extension of an additional 11 months (for a total maximum of 29 months) or an extension of an additional 18 months due to the occurrence of a second QE (for a total maximum of 36 months).

EXTENSION OF COBRA COVERAGE

- ◉ Disability (additional 11 months)
(covered EE, spouse, or dependent child)
 - ◉ Disability must have started sometime before the 60th day of COBRA coverage
 - ◉ Disability must last at least until the end of the 18-month period of COBRA coverage
 - ◉ The disabled QB must notify the plan of disability determination w/in 60 days after the later of:
 - Date SSA issues disability determination
 - Date QE occurs
 - Date QB loses (or would lose) coverage due to the QE
 - Date QB receives the COBRA General Notice
- ◉ Total up to 29 months

EXTENSION OF COBRA COVERAGE (CONT.)

- ◉ Second Qualifying Event
(additional 18 months for 18 month QE)
(spouse or dependent child)
 - ◉ Death of Covered EE
 - ◉ Divorce or legal separation of a covered EE and spouse
 - ◉ Loss of dependent child status under the plan
 - ◉ Covered EE becomes entitled to Medicare

- ◉ Total up to 36 months

EARLY TERMINATION OF COBRA

- ⦿ The group health plan may terminate COBRA early if:
 - ⦿ Premiums not paid in full on a timely basis
 - ⦿ The ER ceases to maintain any group health plan
 - ⦿ A QB begins coverage under another plan
 - ⦿ A QB becomes entitled to Medicare after electing COBRA
 - ⦿ A QB engages in certain types of conduct (such as fraud)

BENEFITS UNDER COBRA

- ◎ A QB is entitled to the same benefits as a similarly situated active EE
 - Benefits, choices, and services
- ◎ A QB is subject to the same rules and limits
 - Co-payments, deductibles, and coverage limits
- ◎ A QB must comply with rules of the plan
 - Filing benefit claims and following the appeals process

WHO PAYS FOR COBRA?

- ◉ Plan limited to charging 102% of premiums (for disability extension - 150%)
- ◉ Plan must allow QBs at least 45 days from COBRA election to make initial premium payment.
- ◉ Must give a minimum 30-day grace period for payment of any premium

ROLE OF THE FEDERAL GOVERNMENT AND COBRA

- U.S. Department of Labor and the U.S. Department of the Treasury have jurisdiction over:

(private-sector group health plans)

- Disclosure
- Notice
- Eligibility
- Coverage
- Payment



RESOURCES

- For **private sector group health plan** information about COBRA, ERISA, or HIPAA call U.S. Dept. of Labor, EBSA toll free: 1-866-444-EBSA (3272)
 - Local number: 816-285-1800
 - Visit our website: www.dol.gov/agencies/ebsa
- **For Family Medical Leave Act (FMLA)** information
 - Call the U.S. Dept. of Labor, Wage & Hour Division at 1-866-487-9243
 - Visit WHD's website: www.dol.gov/whd

RESOURCES (CONT.)

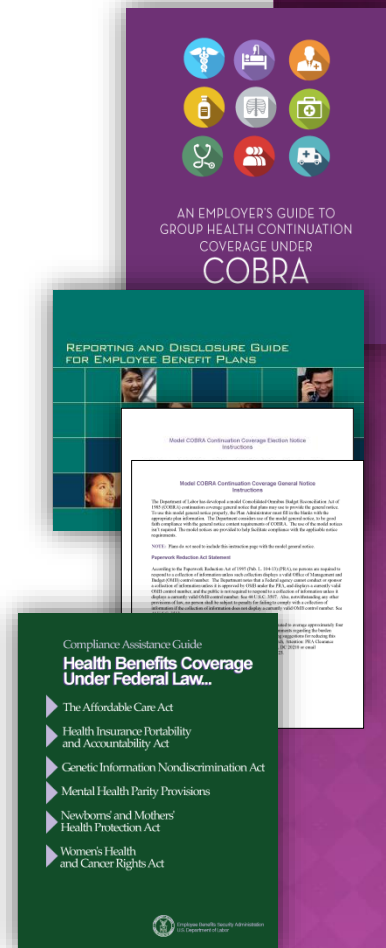
- ◉ For more information on **USERRA** call the U.S. Dept. of Labor, Veterans' Employment and Training Service at (202)693-8140
 - ◉ Visit VETS' website:
www.dol.gov/vets/programs/userra
- ◉ For **public sector EEs** (state and local government) call the U.S. Dept. of Health and Human Services, CMS toll free:
[1-877-267-2323](tel:1-877-267-2323)
 - ◉ Visit CMS's website: www.cms.hhs.gov
- ◉ For **federal EEs** call (202)606-1800
 - ◉ Visit OPM's website: www.opm.gov

OTHER EBSA RESOURCES

○ EBSA's Publications

- An Employer's Guide to Group Health Continuation Coverage Under COBRA - The Consolidated Omnibus Reconciliation Act of 1986
- The 2 COBRA Model Notices
- Reporting And Disclosure Guide For Employee Benefit Plans
- Compliance Assistance Guide – Health Benefits Coverage Under the Federal law

○ Health Benefits Education Campaign Seminar Series





QUESTIONS