

The New COBRA Regulations

by

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More Proactive Notice Requirements Are Now In Place

The U.S. Department of Labor (DOL) has finalized regulations under COBRA's group health plan provisions. These new regulations provide clarification regarding the content and timing of notices employers must send when an employee and the employee's dependents become covered under a group health plan or face loss of coverage under the plan.

Q: What is an employer supposed to do under the new regulations?

A: The employer generally has **30 days** to notify its group health plan administrator that a qualifying event has occurred that would trigger COBRA coverage. The plan administrator then has **14 days** to provide the employee and the employees qualified dependents with a more detailed **election notice**. That notice must include such information as the length of time they'll have to elect coverage, the amount it will cost them, and the dates on which payments are due.

Q: What do the new regulations say about the notices that must be given under COBRA?

A: The first type of notice discussed in the new regulations is the general notice of COBRA rights that employers must give employees and their qualified dependents when their coverage begins under a group health plan. Generally, that notice must be furnished within 90 days after the employee and qualified dependents **first become covered under the plan**.

If a qualifying event occurs during the initial 90-day period, employers can satisfy the general notice requirement by providing the more detailed election notice discussed below.

Employers can usually comply with the general notice requirements for both the employee and the employee's qualified dependents by mailing the notice to their joint address. But if the general notice is hand-delivered to employees at work, it **must also be mailed separately** to the employee's qualified dependents.

The regulations provide a model general notice for use by employers at www.dol.gov/ebsa/modelgeneralnotice.doc.

Q: What do the new regulations say about the type and timing of notices that employers may require qualified beneficiaries to provide when they experience a qualifying event?

A: Assume that the employee is not losing his job, but instead the employee and his spouse are getting divorced. The employer is entitled to receive notice of the divorce so that it can inform the spouse of her right to elect continuation coverage under its group health plan. Qualified beneficiaries must be given at least 60 days to provide notice of the qualifying event to the health plan. In general, that 60-day time frame begins to run on the date of the qualifying event or the date on which coverage would be lost, whichever is later.

Q: What is the employer's responsibility to inform qualified beneficiaries how to go about providing notice of qualifying events?

A: According to the new regulations, the employer's summary plan description must:

1. Provide instructions as to who in the company is designated to receive notices from qualified beneficiaries,
2. Specify a reasonable method of giving such notices, and
3. Specify the required content of such notices.

It is also permissible to require beneficiaries to provide specific information using a specific form.

Q: What about other qualified beneficiary notices?

A: An employee and the employee's and qualified beneficiaries would also be required to notify the employer if they became disabled or if a second qualifying event occurs while they are on COBRA coverage. If that happens, the employee or the qualified dependent may be entitled to extend the duration of the COBRA coverage beyond the 18 months typically provided. The employer must allow at least 60 days for that type of notice as well.

Q: What do the new regulations say about the election notices that plan administrators (or employers) are required to provide to employees and their spouses when a qualifying event occurs?

A: Generally, those notices must be provided within 14 days after receiving notice of a qualifying event. If the employer is also the plan administrator, then the employer is allowed 44 days to provide such notice to qualified beneficiaries.

Q: What about the content of election notices?

A: Employers must provide detailed information and instructions about qualified beneficiaries' COBRA rights and what they must do to elect coverage. Some of the highlights of what the notice must include are:

1. A description of the qualifying event, a list of qualified beneficiaries who are entitled to elect continuation coverage, and the date on which coverage will terminate if an election is not made,
2. An explanation of the procedures for electing continuation coverage, including the date by which the election must be made, the cost of coverage for each qualified beneficiary, the dates when payments will be due, and the date on which coverage will commence and terminate if an election is made,
3. A description of the qualified beneficiaries' rights and obligations if a second qualifying event occurs while COBRA coverage is in effect and
4. An explanation of the consequences of failing to elect or waiving continuation coverage.

The DOL has provided a model election notice that can be used to comply with the new regulations at www.dol.gov/ebsa/modelectionnotice.doc.

Q: Where can the new regulations be found in their entirety?

A: In the *Code of Federal Regulations* — 29 C.F.R. Part 2590. Employers can also access the final regulations on the DOL's website at www.dol.gov/ebsa/.

Other “COBRA” Laws For Small Employers

Many states also have separate health care continuation laws to cover smaller employers who have less than the 20 employees required under COBRA. For example, in Ohio, employees and their qualified dependents may be permitted to continue health insurance coverage under the company's health insurance policy for up to six (6) months after the employee's employment terminates as long as the following conditions are met:

1. The employee and the employee's qualified dependents were continuously covered under the employer's health policy for the three (3) months prior to the employee's termination,
2. The employee is entitled to receive unemployment insurance benefits under Chapter 4141 of the Revised Code,

3. The employee and the employee's qualified dependents are not eligible for coverage under Title XVIII of the Social Security Act as amended and
4. The employee and the employee's qualified dependents are not eligible for coverage under any other insured or uninsured arrangement that provides hospital, surgical or medical coverage for individuals in a group and under which they were not covered immediately prior to their termination.

Under Ohio law, continuation of coverage need not include dental, vision care, prescription drug benefits, or any other benefits provided under the policy other than hospital, surgical, or major medical benefits.

The employer is required to notify the employee of the right of continuation at the time the employer notifies the employee of the termination of employment. This notice must also inform the employee of the amount of contribution required by the employer and where to send the payments.

In order to continue the insurance coverage for the six months required by law, the employee must make full payment by the last day of each month for coverage for the following month. The employer may cancel coverage if payment is not made by the end of each month.

Employees can be required to return a Health Care Continuation Enrollment Form to the employer **within ten (10) days of receiving this notice**. Also, failure to return the form by the due date may be construed by the employer as an election not to continue coverage under the company's health insurance policy.