

LIVING WITH THE COBRA
***(CONSOLIDATED OMNIBUS BUDGET
RECONCILIATION ACT OF 1985)***

by

Scott Warrick, JD, MLHR, CEQC, SHRM-SCP
Scott Warrick Human Resource Consulting, Coaching & Training Services
Scott Warrick Employment Law Services
(614) 738-8317 ♣ scott@scottwarrick.com ♣ WWW.SCOTTWARRICK.COM

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I. COBRA (CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1986) IN GENERAL

On April 7, 1986, President Ronald Reagan signed into law H.R. 3128, the Consolidated Omnibus Budget Reconciliation Act of 1985, or COBRA (29 U.S.C. § 1161, *et seq.*).

This law requires employers with 20 or more employees in either the current or preceding year to provide employees and their covered dependent(s) with the option of continuing their group health, dental, vision and possibly other types of insurance coverage beyond their regular employment eligibility period.

Those individuals opting to continue their coverage through COBRA must do so at their own expense. Employers may charge those persons on COBRA 102% of the total cost of insurance premium. However, those individuals who to opt to continue their coverage under COBRA for even a longer period of time (19 months to 29 months) due to a qualifying disability may be charged 150% of the premium amount during this period of time.

The issue of COBRA rights most often arises when an employee leaves the employer's employment. However, other events may also trigger COBRA rights, such as a divorce, reduction in hours, a dependent reaching age of majority, and so on.

In order to comply with COBRA, employers are required to notify their employees and their employees' covered dependents of their rights under the law within 14 days after they lose their insurance coverage. Employers or plan administrators are also required to notify their employees and their employees' covered dependents of their rights under COBRA when they first enroll in covered plans.

Plan participants then have 60 days from the date of their qualifying event to opt for COBRA coverage. They then have 45 more days to make their first payment.

Employers are also required to notify anyone who has opted to continue their insurance coverage under COBRA when they are within 180 days of losing their eligibility of continuing their coverage.

And finally, employers must notify anyone opting for such coverage under COBRA when their eligibility to continue their coverage has lapsed.

It is also important to note that employers must name and address its notices to each qualified dependent who is of majority age whenever the employer is required to send COBRA notices.

Employers should send their COBRA notices by proof of mailing.

II. WHO IS COVERED BY COBRA?

A. Only Common Law Employees Need Be Counted

COBRA only applies to those employers who employ 20 or more employees on at least 50% of its working days during the current or preceding calendar year.

Before the new COBRA regulations were released, it was undecided whether employers must include self-employed workers, such as independent contractors, directors, and so on in their total employee count in determining whether they were covered by COBRA. Under the new regulations, it is clear that **only common law employees** need be included in this calculation.

B. Counting Employees On A Daily Or Weekly Basis?

All employees may be counted on **either**:

1. A daily basis or
2. Based upon the employer's pay period.

It does not make any difference which method an employer chooses. However, once the employer chooses a method, it must use this method for the entire year for all of its employees.

Part-time employees must also be included in this calculation, but they need not be counted as full-time employees. Instead, each part-time employee may be counted as a fraction of a full-time employee based upon the number of hours worked by the part-time employee divided by the number of hours the employee would have to work to be considered a full-time employee with that employer.

Even though an employer may apply its own business practices in defining what qualifies as a full-time and a part-time employee, under no circumstances may an employer require employees to work more than eight hours a day or 40 hours in a given week in order to qualify as a full-time employee for COBRA purposes.

C. What Organizations Are Excluded From COBRA Coverage?

Certain employers are also excluded from coverage, which include:

1. Small-employers,
2. Churches and
3. The Government.

D. Business Purchases, Mergers and Acquisitions and COBRA

The regulations allow for the companies involved in the transition of one business to the next, such as in the case of mergers, purchases, acquisitions, etc, to contract between themselves which entity will be responsible for complying with COBRA.

However, if no such agreement exists between the parties, and if the transaction is a stock sale or a sale of the company's substantial assets, then it is the SELLER who retains the obligation to comply with COBRA regarding all of its existing COBRA participants.

On the other hand, if the seller fails to provide such coverage to its employees, then the buyer who purchased stock or purchased the substantial assets of the business and continues to conduct its business without interruption or any substantial changes becomes responsible for supplying COBRA coverage for the seller's former employees.

E. Coverage For Newborns

COBRA grants coverage and continuation rights to children born or adopted during a period of COBRA coverage.

The regulations state that if a second qualifying event occurs BEFORE the child is born, such as in the death of the ex-employee, the second qualifying event also applies to the unborn child. As a result, the child would also be eligible to receive up to 36 months of COBRA coverage starting from the date the qualifying event occurred.

Further, once the child is born or adopted, another 60-day period election period begins. During this period, if a qualified beneficiary is classified as being disabled, qualified beneficiaries may elect to receive an extension of

COBRA coverage for up to 29 months. In reality, this is a second period of disability extension eligibility.

The regulations also state that if a covered employee does not elect COBRA coverage during the election period, then any child born or adopted by the employee is not eligible to opt for COBRA coverage.

F. Qualified Beneficiaries v. Covered Dependents

Plan participants are not required to opt for the same type of coverage they previously had with the employer. For instance, if an employee carried family coverage with his employer, once he and his dependents became eligible for COBRA, he may again opt for family coverage or he may opt for single coverage for himself or one of his family members could opt for single coverage on their own.

It is important to note that while plan participants can reduce their coverage from family to single, they cannot increase it from single to family once they become eligible for COBRA. Only those dependents who were previously covered under the employer's insurance plan are eligible for COBRA coverage.

Under HIPAA and COBRA, a qualified beneficiary who is on COBRA must be allowed to:

1. Switch coverage at Open Enrollment **AND**
2. Enroll dependents not formerly on the COBRA plan, subject to the rules of HIPAA.

Therefore, as a result of HIPAA, if a family member does not enroll in COBRA when it is first offered, yet does elect for coverage at Open Enrollment, then the employer or plan administrator must allow the family member to elect coverage under COBRA. The new enrollee, however, will be classified as a "covered dependent" and not a "qualified beneficiary." The difference between the two classifications is quite important.

Qualified beneficiaries derive their rights under COBRA from the fact that they were participants in the plans offered by the employer. Covered dependents, who are late enrollees into the COBRA coverage, derive their rights from the other participants in the plan.

Consequently, qualified beneficiaries have independent COBRA election rights. Even if the employee drops COBRA coverage, a qualified beneficiary in the plan may continue coverage. This is not the case with covered dependents.

Also, if a second event occurs that allows the individuals in the plan to extend their coverage to 36 months, this extension only applies to the qualified beneficiaries. Covered dependents receive no such extension.

A child who is born to or adopted by a qualified beneficiary during the COBRA coverage period is also classified as a qualified beneficiary.

III. WHAT ARE “QUALIFYING EVENTS” AND HOW LONG DOES COBRA LAST?

A. 18-Month Events

In two instances, employees and their covered dependents are permitted to continue their insurance coverage for up to 18 months under COBRA. The two instances include:

1. The employee loses his/her job for any reason other than “gross misconduct” or
2. The employee’s hours are reduced so that he/she is no longer eligible to receive covered benefits.

If an employee is terminated for “gross misconduct,” then no COBRA rights are available. Of course, no clear definition is given regarding what constitutes “gross misconduct.”

B. 36 Month Events

Under COBRA, covered beneficiaries are often entitled to receive COBRA benefits for a longer period of time than the covered employee. In the following instances, the employee’s qualified beneficiaries are entitled to receive 36 months of COBRA coverage:

1. A covered employee dies,
2. A dependent child loses covered status under the plan,
3. When the covered employee becomes entitled to Medicare,
4. The covered employee becomes divorced or legally separated or
5. When multiple qualifying events occur.

If a second qualifying event occurs, dependents are required to notify the employer or plan administrator within 60 days of the event **IF** the plan administrator or employer has first notified the employee and his/her dependents that it is their responsibility to provide such notice. Such notice requirements should be included in the summary of rights notification given to plan participants when they first enroll.

However, the final regulations specifically state that terminating the employee's employment **following** the reduction of hours does not constitute a secondary qualifying event that would extend the maximum coverage to 36 months.

C. 29 Month Event: Disability Extension

Employees and their dependents who are beneficiaries under COBRA can extend their COBRA coverage from 18 to 29 months if the following conditions are met:

1. A beneficiary is determined to be disabled before or within the first 60 days of coverage and
2. The plan administrator receives a copy of the person's disability determination from the Social Security Administration within 60 days after the determination is issued.

The final regulations clear up the guidelines.

1. First, in determining if the beneficiary became disabled within the first 60 days of COBRA eligibility, the plan administrator should begin counting from the date of the COBRA qualifying event.
2. This 60-day period **IS NOT** measured from the date of COBRA election, but is instead measured from the first date the disabled person was eligible to elect COBRA coverage.
3. As for newborns and newly adopted children, this 60-day period begins running from the date of the child's birth or adoption, not from the original qualifying event.

Under COBRA's proposed regulations, if one family member qualifies for 29 months of coverage, then everyone in the family qualifies for 29 months of COBRA coverage. The disabled family member need not actually participate in the COBRA coverage.

However, if the disabled participant is found to no longer be disabled, and if that person has extended COBRA coverage to 29 months due to this disability, coverage may be cancelled on the first day of the month following this determination.

The regulations also state that if a disabled individual is part of a family electing for the 29 months of disability extension coverage, yet the disabled individual is not covered on the plan, then only 102% of the premium may be charged to the COBRA participants for their coverage from months 19 to 29.

D. Retirees and Chapter 11 Bankruptcy

Retirees receiving retiree health coverage experience a qualifying event should the company declare Chapter 11 bankruptcy. (Bankruptcy is not a qualifying event for current employees, nor is the closing of a business, since the employer is no longer offering a health plan.) Retirees experiencing such an event may continue on their retiree coverage under COBRA until they die. Once the retiree dies, his/her covered dependents would experience a second qualifying event, which would allow them to continue their COBRA coverage for the next 36 months.

E. Wrongful Denial Of Coverage

If a qualified individual is illegally denied coverage under the employer's plan, such as in the case of a HIPAA violation, and the person then has a COBRA qualifying event, that individual has a right to obtain and continue coverage under COBRA just as if he/she had always been a plan participant.

F. Anticipating A Qualifying Event

Even if a plan participant anticipates that a qualifying event is about to happen, such as in the case of a divorce or a legal separation, COBRA rights do not begin until the event actually occurs.

The regulations expand this concept to also state that even if an employee drops his/her spouse's coverage in anticipation of a divorce, the plan must STILL offer the ex-spouse COBRA upon being notified of the divorce, provided notice is received within the 60-day time period.

Still, COBRA coverage need only be provided from the date of the qualifying event, which is the divorce.

IV. WHAT IS THE COST OF COBRA?

A. Paying For Extended Health Coverage With A Qualifying Disability

Plan participants may be required to pay 102% of the total cost of the plan's premium.

Qualified disabled beneficiaries electing for extended health plan coverage may be required to pay 150% of the plan's total cost of the premium after from the 19th month of coverage to the 29th month of coverage if the person who was declared disabled also elects coverage under COBRA.

The regulations also state that if a disabled individual is part of a family electing for the 29 months of disability extension coverage, yet the disabled individual is not covered on the plan, then only 102% of the premium may be charged to the COBRA participants for their coverage from months 19 to 29.

However, if the participant with a disability has a second qualifying event within the **original 18 months** of COBRA coverage which extends COBRA coverage to 36 months, the most the person can be charged is 102% of coverage.

On the other hand, if a second qualifying event occurs **after** the end of the first 18 months of COBRA coverage, the disabled participant can be charged 150% of the premium cost for the remainder of the COBRA period, which would be from the 19th month of coverage to the 36th.

B. Increasing Plan Premiums

Plan premiums may be increased once every 12 months if the cost of the plan increases.

V. NOTICE REQUIREMENTS

A. COBRA Notice Sent Upon Enrollment In Covered Plans

In a footnote to the Preamble of the IRS regulations, the Department of Labor has asserted that plan participants are not required to provide their employers or plan administrators with any notice of their divorce or loss of dependent status if the employee or qualified beneficiaries have not been adequately notified of this obligation.

Therefore, it is very important that a summary of COBRA rights is sent to the employee's home, as well as any other residences where plan participants of majority age reside, **at the time they enroll in a covered plan.**

If the plan administrator or employer fails to send this summary of rights under COBRA, then either the employer or the plan administrator will be forced to track these events and send COBRA notices to the qualified beneficiaries when these qualifying events occur. However, tracking such information is nearly impossible.

Again, the notice must be addressed to all plan participants who are of majority age residing at this address.

NOTE: What Is The Most Common Error Made In COBRA Administration?

According to the IRS, the most common mistake made in administering COBRA is that employers fail to notify covered spouses and beneficiaries of their rights under COBRA.

B. COBRA Notice Sent Upon The Occurrence Of A Qualifying Event

In order to comply with COBRA, employers are required to notify their employees and their employees' covered dependents of their rights under

the law within 14 days of losing their insurance coverage due to a qualifying event.

Plan participants then have 60 days from the date of their qualifying event or when they received their COBRA notice, which either is later, to opt for COBRA coverage. They then have 45 more days to make their first payment.

Employers must name and address this notice to each qualified dependent who is of majority age. Employers should send their COBRA notices by proof of mailing.

All qualified beneficiaries who are of majority age AND have separate mailing addresses must receive separate notices mailed to each address.

Of course, the regulations also state that one notice addressed to all the qualified beneficiaries residing at the same address will suffice. However, the package must be clearly addressed to all such persons.

Unless the plan states otherwise, employees must submit all notices and forms to the plan administrator and not to the employer.

C. COBRA Notice Of 180 Days Until The Termination Of Benefits

Employers are also required to notify anyone who has opted to continue their insurance coverage under COBRA when they are within 180 days of losing their eligibility of continuing their coverage.

D. COBRA Notice Of Termination Of Benefits

Employers must notify anyone participating under COBRA when their eligibility to continue their coverage has actually lapsed.

E. Evidence Of Internal COBRA Procedures Proved That Election Notice Was Mailed

In Smith v. AT&T Broadband Network Solutions, Inc., 2002 U.S. Dist. LEXIS 3816 (N.D. Ill. 2002), a terminated employee sued his former employer for failing to provide notice of his right to elect continuation coverage under COBRA. Although the employer claimed that a notice was mailed by first-class mail, the employee denied receiving it. The employer offered evidence of its regular COBRA procedures, which consisted of electronically notifying its third-party administrator (TPA) at the end of each payroll period of the employees who were no longer on the payroll. The TPA would then send the required COBRA election notices to these former employees by first-class mail. The employer did not normally retain copies of the election notices that were mailed by the TPA (although apparently it did submit a copy of the election notice sent to the employee as evidence in this case). However, in the regular course of its

business, the employer kept a computer-generated log of the notices. The employer provided a copy of the log as evidence. The employee did not dispute the employer's evidence of its procedures, nor did he suggest that the procedures were not followed in his case.

The court noted that sending an election notice by first-class mail to the employee's last-known address was sufficient to meet COBRA's election notice requirements, although the plan administrator must prove that the notice was **actually mailed**. The court found the employer's **evidence of its standard procedures** sufficient to prove that the COBRA election notice had been mailed to the employee.

Therefore, it is not the employer's burden to show that COBRA Notices were received. The employer must only show that the proper COBRA Notices were sent, either by following standard operating procedures, sending these notices "certificate of mailing," etc.

F. Contracting With Agent to Send COBRA Notices Does Not Constitute Good Faith Compliance With COBRA; EMPLOYER RETAINS LIABILITY FOR ENSURING THAT COBRA NOTICES ARE SENT

In Scott v. Suncoast Bev. Sales, Ltd., No. 01-11734 (11th Cir., June 25, 2002), Ivory Scott was terminated and later sued his former employer for failing to notify him of his right to continue health coverage under COBRA. The employer argued that it had contracted with a third-party administrator (TPA) to send COBRA notices, and argued that it complied with COBRA by providing the TPA with the necessary information and instructing the TPA to send a COBRA election notice to the employee. However, the court held that the employer had not met its COBRA obligations and imposed a penalty of \$20 per day for a period of 18 months (a total of \$10,800) under ERISA Section 502(c).

The court reasoned that the responsibility of sending COBRA notification lies with the employer. Even if the employer contracts with a vendor to send these notices, the legal responsibility always remains with the employer.

VI. ELECTING COBRA COVERAGE

A. The 60-Day Election Period

The regulations state that qualified beneficiaries must elect COBRA coverage:

1. Within 60 days **AFTER** the election notice is “provided to” the individual or
2. Within 60 days **AFTER** the loss of coverage, which ever is later.

This is a change from the previous regulations that began the 60-day election period from the date the COBRA election notices were “sent to” the individual.

Most likely, under this new regulation, the 60-day time period will begin to run once the individual **RECEIVES** the COBRA notice.

The regulations further state that if a qualified beneficiary waives his/her COBRA rights, this beneficiary may revoke this waiver and opt for COBRA coverage at any time during the 60-day election period.

B. COBRA Election By Third Parties

Any third-party, such as a hospital, can make the COBRA election on behalf of the qualified beneficiary.

If an employee or spouse makes a COBRA election but does not specifically state that the COBRA election is for single or self-only coverage, then the election is deemed to be for all eligible members who are qualified beneficiaries at the time of the qualifying event.

C. 45 Days Until First Payment Is Due

COBRA not only provides plan participants with 60 days in which to elect continued coverage, but once this election is made, those opting for COBRA coverage then have another 45 days in which to make their first payment. Therefore, from the date of first qualifying event, COBRA participants have a total of 105 days in which to make their first payment and bring their account current.

Of course, under the new regulations, COBRA participants are allowed to “come close” to paying the full amount. As long as their payment is “insignificantly short,” they plan administrator must accept the payment and make arrangements with the participant for the remainder.

The regulations do not say what is meant by the term “insignificantly short.”

VII. PAYING FOR COBRA

A. 30-Day Grace Period Is The General Rule

In general, COBRA allows its participants to be up to 30 days late with their payments before an employer or plan administrator can cancel the person’s coverage. However, the new regulations make this 30-day grace period deadline rather fuzzy.

B. “Insignificantly Short”

COBRA coverage cannot be terminated if the payment sent by the beneficiary is short by an “insignificant” amount, provided the plan administrator notifies the beneficiary of the amount of the deficiency and then grants a “reasonable” period of time to make up the deficiency.

What is a “reasonable” period of time? 30 days.

What is an “insignificant” amount? The regulations do not say.

C. Shorter Than Monthly Payments Permissible

COBRA beneficiaries may make their payments in intervals shorter than monthly installments, such as weekly, bi-weekly, etc.

D. Payments Made By Third Parties

Plan administrators must accept payment of COBRA premiums from any third party, which includes a new employer, relatives, hospitals, etc.

E. The Mailbox Rule

The COBRA payment is deemed to have been paid on the date it is mailed...not on the date it is received. This is commonly referred to as the “mailbox rule.”

Consequently, plans must classify COBRA payments as having been made in a timely manner if they become lost or delayed in the mail, even if the payment is received until after the expiration of the grace period.

Of course, the beneficiary must prove that the payment was mailed in a timely manner, which can usually be accomplished by examining the date the letter was postmarked once it finally arrives.

F. Credits For Deductibles, Co-Pays, Limits, Etc.

If a family's coverage is split into two or more units due to a COBRA event, such as a divorce, the deductibles and other expenses incurred that count towards any plan limitations must be attributed separately to each individual or for each family unit accordingly.

G. Withholding Money From An Employee's Final Check

The regulations specifically prohibit employers from withholding money from an employee's final paycheck to pay for COBRA premiums or to offset any amounts drawn from a Health FSA in excess of the employee's contributions.

VIII. TERMINATING COVERAGE UNDER COBRA

A. The Five Basic Reasons For Terminating COBRA Coverage

Under COBRA, there are five situations in which an employer may legally terminate COBRA coverage, which include:

1. All health plans are terminated,
2. The beneficiary fails to make his/her COBRA payment in a timely manner, which is loosely defined as being within 45 days after the COBRA election is first made and 30 days after the date the premium is due for all subsequent payments,
3. The beneficiary is found to no longer be disabled, if that person has extended COBRA coverage due to this disability, so coverage may be cancelled on the first day of the month following this determination,
4. The beneficiary decides to cancel his/her COBRA coverage and
5. The beneficiary becomes covered by another plan, but **ONLY** if the new coverage becomes available **AFTER** the beneficiary elects COBRA coverage. If the participant had this other coverage **at the time he/she opted for COBRA** coverage, then this other coverage **cannot** be used to terminate the recipient's coverage.

Further, if this other coverage has any restrictions or limitations that are covered by the recipient's COBRA coverage, then the recipient's COBRA coverage may not be cancelled.

These regulations apply to those who have opted for Medicare Coverage before electing COBRA.

(COBRA's regulations adopt the U.S. Supreme Court's ruling in Geissal v. Moore Medical Corp., 118 S. Ct. 1869 (1998).)

B. Coordination With Medicare

1. Medicare Entitlement Occurring BEFORE The COBRA Qualifying Event

If a covered employee becomes entitled to Medicare coverage before qualifying for COBRA due to a termination of employment or a reduction in hours, then the employee's qualified beneficiaries are entitled to receive 36 months of COBRA coverage measured from the date the Medicare entitlement was granted...not from the date of the COBRA qualifying event.

2. Medicare Entitlement Occurring AFTER The COBRA Qualifying Event

If a covered employee becomes entitled to Medicare coverage after qualifying for COBRA coverage, the plan may terminate the employee's COBRA coverage.

However, this would be considered a second qualifying event for the employee's qualified beneficiaries. Therefore, these qualified beneficiaries would be entitled to receive 36 months of COBRA coverage, which is measured from the initial qualifying event.

The regulations further state that a person first becomes entitled to Medicare coverage when he/she **actually enrolls** in either Medicare Part A or B.

IX. GROUP PLANS UNDER COBRA

A. What Is A Group Health Plan Under COBRA?

Under the new regulations, many "group health plans" must comply with COBRA. This terminology may include more than just medical plans. Dental, vision, hearing, mental health, prescription drug, PPOs, HMOs and retiree health plans are considered group health plans. Employee Assistance Programs and Wellness Programs may also be covered by COBRA if they provide benefits normally covered by COBRA, such as mental health visits, etc. Health Flexible Spending Accounts may also be considered group health plans.

The regulations state that a group health plan under COBRA includes any plan maintained by any employer to provide health care to individuals who have an "employment-related" connection to the employer.

Consequently, a plan will be classified as an employer-sponsored plan even if the employer does not make any contributions to it, but merely makes it available to the employees if this plan. The true test in the instance is determining if this same plan would be available to these employees at the same cost they are receiving it from the employer if they tried to buy the coverage themselves individually. If not, then it is an employer-sponsored plan.

Specifically, the following plans have been excluded from COBRA coverage:

1. Qualified Long-Term Care Plans
2. Accidental Death and Dismemberment Plans,
3. Dependent Care Programs,
4. Life Insurance,
5. Disability Plans,
6. Travel Accident Insurance,
7. Vacation Time and
8. Medical Savings Accounts.

B. More Than One Health Plan Offered?

If an employer offers several group health care benefits, all of these benefits may be classified as either separate plans or one single plan depending on how the documents governing these plans are drafted.

If it is not clear from the documents that the plans are separate, then all of the plans will be considered together as one group.

Of course, if these plans are deemed to be all combined under one plan, the employer may require qualified beneficiaries who elect COBRA coverage to pay for all of the benefits in this plan.

C. COBRA Coverage Area

Previously, if a COBRA recipient moved out of the area served by the employer's health plan, such as when an HMO is providing coverage, the recipient had to be offered coverage only if the employer had employees in this area.

Under the new regulations, coverage must be offered by the employer if it is able to provide coverage in this area, regardless of whether the employer has any employees in this area or not.

D. What Coverage Must Be Offered? Core Coverage V. Non-Core Coverage

Previously, employers whose health plans included core coverage (medical) and non-core coverage (dental and vision) were only required to offer the core health insurance coverage to its COBRA recipients.

Under the new regulations, employers must offer the same core and non-core benefits that the participants had before the qualifying event occurred.

E. Changes In The Plans

If the coverage offered to employees is changed or eliminated, those individuals covered under COBRA may only choose coverage among the options offered to “similarly situated non-COBRA beneficiaries.” Therefore, the employer is not required to offer COBRA participants any coverage that is made available to other “non-similarly situated” employees.

On the other hand, if **all coverage** for the “similarly situated non-COBRA beneficiaries” is eliminated, then the employer must offer to those individuals on COBRA the option to enroll in any other plan it sponsors or maintains.

F. Alternative Coverage Provided By The Employer

Sometimes employers sponsor coverage for their COBRA eligible participants as an alternative to opting for COBRA coverage. When those participants enrolled in these alternative plans experience a COBRA qualifying event, such as death or divorce, the right of the spouse or dependents to receive this alternative coverage may end. As a result, this event is regarded as a COBRA qualifying event, regardless of whether the event occurs during or after the first 18 months of coverage in this alternative plan.

Consequently, the death or divorce of a covered employee while participating in this alternative plan will can result COBRA rights for the employee’s beneficiaries of up to 36 months.

G. COBRA and Flexible Spending Accounts

Health Flexible Spending Accounts, or “FSAs”, qualify as group plans under COBRA for continuation rights. However, in most instances, continuing employees’ coverage in an FSA after they have left an employer’s employment serves little purpose.

Instances where Health FSAs become more important regarding COBRA rights occurs when other benefit plans are offered through the Health FSA or when the employer contributes **its own money** to the employee's Health FSA.

Therefore, the regulations state that COBRA coverage need not be made available for any plan year beyond the plan year in which the qualifying event occurs if the Health FSA meets **two conditions**, which are:

1. The Health FSA is not subject to the HIPAA portability provisions because the benefits provided under the Health FSA are **excepted benefits** and
2. The maximum amount that the Health FSA could require to be paid for a full year of COBRA coverage equals or exceeds the maximum benefit available from the Health FSA for the year.

Also, if the cost to the individual to participate in COBRA exceeds the maximum benefit the person could receive, then Health FSA COBRA coverage need not be made available to the person.

A Health FSA is an "**excepted benefit**" under HIPAA if:

1. The maximum benefit an employee could receive under the plan is less than the greater of:
 - a) Two (2) times the employee's annual salary reduction amount or
 - b) The employee's annual salary reduction amount plus \$500.00.
2. The employee has other group health coverage available and
3. The other health coverage available to the employee is not a HIPAA excepted benefit.

In practicality, if an employer offers a Health FSA to its employees, the Health FSA will be classified as an excepted benefit. Most employers offer their employees a group health plan that is separate from the Health FSA.

Most Health FSA Plans are **salary reduction only** plans wherein the employee has his/her wages reduced by a certain sum and these monies placed into the FSA account on a pre-tax basis. The employee then receives this pre-tax money from the plan when the employee presents the receipts to the plan administrator verifying that certain health –related expenses were in fact incurred.

However, the issue of COBRA continuation of an employee's Health FSA Plan occurs when:

1. The employee is no longer eligible to participate in the Health FSA Plan, such as when an employee leaves the company's employment, and
2. The employee still has money available to him in the FSA.

Expenses must be incurred while the employee is a participant in the Health FSA Plan, which means the employee must be actively contributing to the FSA plan.

If the employee did not incur enough expenses to retrieve the money he has contributed to the Health FSA account while he was a participant (contributing) in the FSA Plan, then he will lose this money contributed unless he continues to be an FSA Plan participant under COBRA and incurs the necessary expenses while on COBRA.

Consider the example of an employee, Joe. Joe maintains a HIPAA-excepted Health FSA Plan that allows for only pre-tax employee contributions. Joe enrolled to contribute \$1,200.00 per year to this FSA Plan. (Assume the Plan Year is a calendar year.) Joe then leaves employment on June 30th of that year (half way through the plan year) after having contributed \$600.00 into this account.

Also assume that Joe has only incurred \$200.00 of qualifying expenses while he was an employee and a plan participant this plan year, but Joe has not yet submitted these expenses to the FSA Plan.

First, Joe can still submit for FSA reimbursement the \$200.00 in expenses that were incurred while he was an employee and a participant in the FSA Plan. The FSA Plan administrator must reimburse the employee for this amount since these expenses were incurred while he was participating in the FSA Plan.

This would leave Joe with \$400.00 in his Health FSA account without having incurred any further expenses this plan year to retrieve this money.

Since Joe must incur expenses while he is a plan "participant" in order for these expenses to qualify for reimbursement, Joe must either continue to participate in the FSA Plan as an ex-employee under COBRA, which would require him to contribute \$102.00 per month to the FSA Plan ($\$100.00/\text{month} \times 102\% = \$102.00/\text{month}$ COBRA payment), or forfeit the remaining \$400.00 per month in his FSA account.

If Joe elects COBRA coverage, he may submit any expenses he incurs while he is an FSA participant under COBRA.

If he does not elect to participate in the FSA Plan under COBRA, then he will forfeit the \$400.00 in his FSA account since the expenses he incurs after his employment will not qualify as reimbursable expenses under the FSA Plan since he was not an active participant when they were incurred.

X. INQUIRIES FROM HEALTH CARE PROVIDERS

A. “Complete Response” Is Required

If a health care provider makes an inquiry regarding a qualified beneficiary’s status during the COBRA election period, employers and plan administrators are now required to make a “complete response”.

Therefore, if a COBRA beneficiary has not yet elected for coverage, the plan administrator or employer must inform the health care provider that the beneficiary has not yet elected for coverage. However, the health care provider must also be told that if the beneficiary does opt for COBRA coverage, his/her coverage will be reinstated retroactively to the first date of eligibility.

This “complete response” requirement also exists regarding any such inquiries made during any grace periods in which the beneficiary has not yet made the necessary payments.

XI. COORDINATION WITH OTHER LAWS

A. Coordination With HIPAA

If an employee declines coverage for his/her spouse or dependents because they were covered under another plan at the time, then the spouse and/or dependents must be given the right to enroll in the employer’s plan under COBRA if that coverage is ever lost through no fault of their own.

Special enrollment rights under HIPAA also begin if an employee has a new dependent due to birth, marriage or adoption.

However, under the COBRA regulations, a spouse or dependent who is added to the plan while on COBRA is not considered a qualified beneficiary for COBRA purposes if that person failed to enroll when first eligible.

COBRA beneficiaries are entitled to receive the same HIPAA “special enrollment” rights that enable them to add family members as participants in the covered plans.

B. Coordination With Family And Medical Leave Act (FMLA)

The regulations make it clear that being on FMLA leave is not a qualifying event for COBRA.

However, once FMLA leave ends, a COBRA qualifying event may occur due to the employee working a reduced number of hours or a failure to return to work.

XII. THE HIGH COST OF NOT COMPLYING WITH COBRA

A. Penalties And Fines

Plan administrators who violate COBRA's notification requirements may be fined \$110.00 per day per individual who did not receive notice. The IRS begins counting from the day the notices were first past due.

The IRS may also impose a penalty, or an excise tax, up to \$100.00 per beneficiary (maximum of \$200.00 per family) for every day the employer failed to comply with COBRA. Employers may avoid this fine if it can show that its noncompliance was due to some reasonable mistake rather than "willful" neglect. Employers must also show that the error was corrected within 30 days of its discovery.

B. Cost of Expenses Incurred

Employers and plan administrators may also be liable for all past and future covered expenses (i.e., medical, dental, vision) during the beneficiary's COBRA continuation period.

C. Attorney's Fees and Costs

Employers and plan participants are also liable for all attorney's fees and other costs incurred by plan beneficiaries to exercise their rights under COBRA.

D. Statutory Penalties Awarded to Both Participant and Child for Employer's Failure to Provide COBRA Election Notice

In Torres-Negron v. Ramallo Bros. Printing, Inc., 2002 U.S. Dist. LEXIS 8225 (D.P.R. 2002)], the employee worked as the employer's Human Resources Director for nine months, during which time she repeatedly told her employer that the company was required to inform employees of their COBRA rights under the employer's group health plan. Torres-Negron was terminated on July 31, 1998 and did not receive a COBRA election notice. She initiated a lawsuit on June 10, 1999, seeking statutory penalties under ERISA, compensatory damages, costs and attorneys' fees based on the employer's failure to provide her

with a COBRA election notice. On June 25, 1999, the employer finally provided the employee with a COBRA election notice. The employee did not elect COBRA even after she received her notice.

The court found that the employer violated COBRA when it failed to provide the employee and her minor son with a COBRA election notice, concluding that whether or not the employee had personal knowledge of her rights under COBRA was irrelevant. (In so holding, the court assumed that the employer was the plan administrator because no evidence was presented to the contrary.) The court dismissed the employee's request for compensatory damages, finding that COBRA did not provide for compensatory damages for emotional harm (the only harm alleged by the employee).

However, the court awarded ERISA statutory penalties in the amount of \$45 per day for each of the employee and her son, for the period beginning 44 days after the employee's termination and ending on the date she filed her lawsuit (a total of 271 days). The court also awarded costs and attorneys' fees to the employee.

XIII. COBRA REGULATIONS: Q & A

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/modelelectionnotice.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/.

Legal Advice Disclaimer

The purpose of these sample forms and letters is not to act as legal advice. Instead, these sample forms and letters are provided for illustrative purposes only and are not intended to provide legal counsel. No one should use these forms or letters or rely upon any of their provisions without fully understanding their legal consequences in the context of their specific facts and circumstances.

The facts of each instance vary to the point that such a brief overview and such a general application of these forms to every situation could not possibly be used in place of the advice of legal counsel. For instance, not every clause included in these samples applies in every situation. Also, employment and labor laws are in a constant state of change by way of either court decisions or the legislature.

Therefore, when using these forms and letters, the advice of an attorney should be sought.

ABC COMPANY: NOTICE OF COBRA RIGHTS

This notice is intended to summarize your rights and obligations under the group insurance continuation coverage provision of COBRA. You, your spouse and your covered dependents should take the time to read this notice carefully. In certain instances, should you qualify for COBRA coverage in the future, the group insurance plan administrator or plan sponsor will send you the appropriate notification.

Federal law requires ABC COMPANY (From hereon referred to as the “Company”) to offer employees and their families the opportunity for a temporary extension of group insurance coverage (called “continuation coverage”) at group rates in certain instances where coverage under the plan would otherwise end. The COBRA law also requires that this notification be given to the covered employee and each of his/her qualified dependents. Should any of the eligible applicants reside at a different address, you must advise the Company immediately so that we may send them a notice and election form.

TO QUALIFY FOR COBRA COVERAGE

Employees --As an employee of the Company covered under its group insurance plan (s), you have the right to elect this continuation coverage if you lose your group insurance coverage because of (1) a reduction in your hours of employment or (2) the termination of your employment (for reasons other than gross misconduct on your part).

Retirees --As a retiree, spouse of a retiree, or dependent child of a retiree of the Company covered under its group insurance plan(s), you have the right to elect this continuation coverage if you lose your group coverage because the Company declares Chapter 11 bankruptcy and you lose your group health care coverage within one year before or after the bankruptcy proceedings.

Spouses --As the spouse of an employee covered under the Company’s group insurance plan(s), you have the right to choose continuation coverage for yourself if you lose group coverage for any of the following reasons:

- The death of your spouse who was an employee of the Company,
- A termination of your spouse’s employment (for reasons other than gross misconduct),
- A reduction in your spouse’s hours of employment,
- Divorce or legal separation from your spouse, or
- Your spouse becomes entitled to Medicare.

Dependent Children --In the case of a dependent child of an employee covered under the Company's group insurance plan(s), he/she has the right to continue coverage if this coverage is lost for any of the following reasons:

- The death of a parent who was an employee of the Company,
- The termination of a parent's employment (for reasons other than gross misconduct) or reduction in a parent's hours of employment with the Company,
- Parent's divorce or legal separation,
- A parent who was an employee of the Company becomes entitled to Medicare, or
- The dependent ceases to be a "dependent child" under the Company's group insurance plan(s).

A child born to or placed for adoption with you during the period of COBRA coverage is also entitled to coverage.

CHOOSING COVERAGE

Each of you has a separate right to elect continuation coverage in the plan(s) under which you were covered. For example, should the employee not elect to continue medical coverage, a covered spouse may elect such coverage for his or herself and/or any dependent children.

You **cannot** switch from insurer to another upon your initial enrollment in COBRA. (You will be allowed to change coverage at the same time that regular employees are given the option to change coverage during the annual open enrollment. If anyone in your family is enrolled in COBRA coverage at the time of open enrollment, other qualified dependents may also enroll at that time as well. **IT IS YOUR RESPONSIBILITY TO MAKE ANY CHANGES YOU WANT AT OPEN ENROLLMENT AND TO BE AWARE OF WHEN OPEN ENROLLMENT IS SCHEDULED. You may also change your coverage status upon the birth or adoption of a new child.**

A covered employee, spouse, qualified beneficiary or any third-party may make the COBRA election for any eligible party.

EMPLOYEE'S, EMPLOYEE'S SPOUSE AND COVERED DEPENDENTS' NOTICE OBLIGATIONS

Under the law, the employee or a family member has **60 days** from (1) the date of the qualifying event or (2) the date on which coverage would be lost, whichever is later, to inform the Company **IN WRITING** of the employee's **divorce or legal separation, or of the employee's child losing dependent status.**

Failure to give notice within the time limits can result in COBRA coverage being forfeited.

COMPANY'S NOTICE OBLIGATIONS

The Company has the responsibility to notify _____ (Name of Plan Administrator) when the following COBRA qualifying events occur: **employee's death, termination of employment, reduction in hours, or Medicare entitlement.**

TO ELECT COBRA COVERAGE

When _____ (Name of Plan Administrator) is notified that one of these qualifying events has happened, _____ (Name of Plan Administrator) will in turn notify the employee, spouse and dependents that they have the right to choose COBRA continuation coverage. The employee, spouse and qualified dependents have independent election rights. The employee, spouse and dependents have 60 days from either (1) the date coverage is lost under the Company's group insurance plan, or (2) the date the notice is received by the COBRA eligible individuals, whichever is later, to respond informing _____ (Name of Plan Administrator) that they want to elect continuation coverage.

There is no extension of the election period.

If the employee, his/her spouse and his/her eligible beneficiaries do not elect continuation coverage within this election period, then any rights to continue group insurance coverage will end at the expiration of this 60 period.

If an employee, spouse or dependent chooses continuation coverage and pays the applicable premium, the Company is required to provide coverage which, as of the time coverage is being provided, is identical to the coverage provided under the plan to similarly situated active employees or family members. If the Company changes or ends group insurance coverage for similarly situated active employees, your COBRA coverage will also change or end.

DURATION OF COBRA COVERAGE

Termination or Reduction in Hours. If group health coverage was lost because of a termination of employment (other than for reasons of gross misconduct) or a reduction in work hours, the continuation coverage period is **18 months** from the date of the qualifying event, if elected.

Employees, Spouses or Dependents with Disabilities. The 18 months of continuation coverage can be extended to a total of **29 months** if the Social Security Administration determines that the employee, spouse or dependent child was disabled according to Title II (Old Age Survivors and Disability Insurance) or XVI (Supplemental Security Income) of the Social Security Act. **The extended coverage is applicable if the disability exists on the date of the qualifying event or at any time during the first 60 days of COBRA coverage.**

DURATION OF COBRA COVERAGE (cont.)

As for children born or adopted during the COBRA coverage period who are disabled, this 60-day disability election period begins to run again from the date of the disabled child's birth or adoption.

The employee, spouse or dependent must obtain the disability determination from the Social Security Administration and notify the Company of the result within **60 days of the date of disability determination and before the close of the initial 18-month period.** The employee, spouse or dependent has **30 days** to notify the Company from the date of a final determination that he or she is no longer disabled.

Multiple Events. The 18-month COBRA continuation period may also be extended if during the 18 months of continuation coverage, **a second event takes place (divorce, legal separation, death, Medicare entitlement, or a dependent child ceases to be a dependent under the group insurance plan.)** The 18 months of continuation coverage will be extended to **a total of 36 months from the date of the original qualifying event when such second qualifying events occur.** Upon the occurrence of a second event, it is the **employee's, spouse's or dependent's responsibility to notify the Company** within **60 days of the event and within the original 18-month COBRA period.** **COBRA coverage does not last beyond 36 months from the original qualifying event, no matter how many events occur.**

However, terminating the employee's employment **AFTER** reducing the employee's working hours **DOES NOT** constitute a second qualifying event that would extend the COBRA coverage to 36 months.

Other Qualifying Events. If group health coverage was lost because of the death of the employee, divorce, legal separation, Medicare entitlement, or a dependent child ceasing to be a dependent child under the Company's group insurance plan(s), then the continuation coverage period is **36 months** from the date of the qualifying event, if elected.

COBRA CANCELLATION

The law provides that continuation coverage may be cut short for **any** of the following reasons:

- The Company no longer provides group insurance coverage to any of its employees,
- A significant portion of the premium for continuation coverage is not paid in a timely manner,
- The employee, spouse or dependent later becomes covered under another group health plan that **does not** contain any exclusion or limitation with respect to any preexisting condition.

(Such an exclusion does not prevent the termination of COBRA continuation coverage if that exclusion does not apply due to compliance with the portability provisions contained in the Health Insurance Portability and Accountability Act (PL 104-191, 110 Stat 1936),

- The employee or spouse later becomes entitled to Medicare,
- The employee, spouse or dependent extended continuation coverage to 29 months due to a Social Security disability and a final determination has been made that he or she is no longer disabled, or
- The employee, spouse or dependent notifies the Company that they wish to cancel COBRA coverage.

PREMIUM PAYMENTS

An employee, spouse or dependent does not have to show that they are insurable in order to choose continuation coverage. But, an employee, spouse or qualified dependent **must** have been actually covered by the group insurance plan(s) **the day before the qualifying event in order to elect COBRA coverage.** If anyone in the family elects COBRA coverage initially, other family members may elect group insurance coverage at the company's annual open enrollment.

An employee, spouse or dependent may be required to pay all of the applicable premium, which generally cannot exceed 102% of the plan costs for a 12-month period. An exception exists for coverage of employees or their eligible dependents with disabilities are enrolled in COBRA coverage. If so, COBRA coverage for the entire family may be extended from 18 months to 29 months. However, if the disabled person elects COBRA coverage, **150% of the plan cost** may be charged to the family from the **19th month to the 29th month.** If the disabled person DOES NOT elect COBRA coverage, the rest of the family may receive this extension of COBRA coverage to 29 months at 102% of the cost of the premiums.

Also, if a second qualifying event occurs **AFTER** the end of the first 18 months of COBRA coverage, the disabled participant may be charged 150% of the premium cost for the remainder of the COBRA period, which would be from the 19th month of coverage to the 36th.

The group health plan may increase the cost that must be paid for COBRA coverage every 12 months if the applicable premium increases.

The period for paying the initial COBRA premium following the election of coverage is **45 days.** The first payment made is to be applied **retroactively** toward coverage for the period beginning after the date on which coverage would have been lost as a result of the qualifying event.

There is a **30-day grace** period following the date regularly scheduled monthly premiums are due. Only in the case of **mental incapacity** is any further extension permitted, since the group health plan does not permit extensions.

The check for your initial payment must cover the number of full months from the above insurance termination date stated on your (see above) to the time of your payment.

After the initial payment, you must submit the same monthly payment on the 1st of each month until you have been advised of a general change for all participants. If you fail to submit the monthly payment within **30 days** of its due date, your coverage will cease on that date and cannot be reinstated.

All Checks Should Be Made Payable To: ABC COMPANY

CONVERSION PRIVILEGES

At the end of the continuation coverage period, the employee, spouse or dependent must be allowed the option to enroll in an individual conversion health plan provided under the Company's group health and/or dental plan **if such conversion plan is available.**

FURTHER INFORMATION

If you have any questions about the law or your obligations, please contact _____ (Name of Plan Administrator, Address, and Telephone Number).

COBRA ELECTION FORMS

Date of Notice: _____

Dear _____:

As you are aware, your group health, dental, vision and/or flexible spending benefit coverage through the Company have been terminated as of _____ due to _____ (Qualifying event). Under COBRA, you have a maximum of 60 days after the latter of (a) the date coverage will end or (b) the date you receive this notice to return this form to the Company and opt for continued coverage at your own expense. If this notice is not returned within this **60-day** time frame, you and your eligible dependent(s) will forfeit your /their rights for continued coverage. After you return this form, you will then have a maximum of **45 days** in which to make your premium payment, plus a two (2) percent administrative fee, to the Company for the present month's coverage, as well as a payment for the preceding months of qualified coverage.

The initial cost of continued coverage plus administrative fee per month is:

HEALTH		DENTAL		VISION		FLEXIBLE SPENDING	
Family	<u>\$400.00</u>	Family	<u>\$ 25.00</u>	Family	<u>\$ 25.00</u>	Family	<u>\$ 35.00</u>
Single + 1	<u>\$300.00</u>	Single + 1	<u>\$ 20.00</u>	Single + 1	<u>\$ 10.00</u>		
Single	<u>\$160.00</u>	Single	<u>\$ 10.00</u>	Single	<u>\$ 10.00</u>		

After the initial payment is made, subsequent premium payments will be due to the Company by the first of each month.

If you or any of your dependents are covered under another Group Insurance Plan, please indicate below:

Name of Insured	Type of Coverage	Group Plan Sponsor

Is any covered dependent a full-time student? YES NO If so, who? _____

List Name of School Being Attended: _____

INSTRUCTIONS FOR COMPLETING ELECTION FORM

A covered employee, spouse, dependent or third party may make an election for any qualified beneficiary.

Sign and date the form, and send along with a check made out to _____ for the premiums due for the coverage period to date, to:

_____ (Name of Contact and Address)

COBRA ELECTION FORM

HEALTH

_____ I do **NOT** wish to continue my **HEALTH** coverage.

_____ I **DO** wish to continue my **HEALTH** coverage. (List those to be covered)

Name/SSN	M/F	Relation to Employee	Birth Date
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DENTAL

_____ I do **NOT** wish to continue my **DENTAL** coverage.

_____ I **DO** wish to continue my **DENTAL** coverage.

Name/SSN	M/F	Relation to Employee	Birth Date
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COBRA ELECTION FORM

VISION

_____ I do **NOT** wish to continue my **VISION** coverage.

_____ I **DO** wish to continue my **VISION** coverage. (List those to be covered)

Name/SSN	M/F	Relation to Employee	Birth Date

FLEXIBLE SPENDING

_____ I do **NOT** wish to continue my **FLEXIBLE SPENDING** coverage.

_____ I **DO** wish to continue my **FLEXIBLE SPENDING** coverage. (List those to be covered)

Name/SSN	M/F	Relation to Employee	Birth Date

I agree to immediately notify the Company in writing should any disqualifying event occur to either myself or any of my covered dependent(s).

Signature of Person Making Election/Date

Print Name

EMPLOYER'S NOTICE OF QUALIFYING EVENT TO PLAN ADMINISTRATOR

EMPLOYER INFORMATION

Name: _____

Address: _____

Phone: _____

EMPLOYEE INFORMATION

Name: _____

Address: _____

Home phone: _____

Work phone: _____

ID or SSN: _____

Dept./Location: _____

Type of coverage _____

QUALIFIED DEPENDENT INFORMATION

Name	SSN	Coverage(s)	Address
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

TYPE OF EVENT

- | | |
|---|---|
| <input type="checkbox"/> Employment termination | <input type="checkbox"/> Company bankruptcy |
| <input type="checkbox"/> Reduction in hours | <input type="checkbox"/> Dependent not eligible |
| <input type="checkbox"/> Divorce | <input type="checkbox"/> Medicare entitlement |
| <input type="checkbox"/> Legal separation | <input type="checkbox"/> Death of employee |

MISCELLANEOUS INFORMATION

Date of event: _____

Date coverage ends: _____

Date employer notified: _____

Other information: _____

Possible extensions: _____

**180-DAY NOTIFICATION OF EXPIRATION OF COBRA
CONTINUATION RIGHTS SAMPLE LETTER**

RE: 180-Day Notification of Termination of COBRA Coverage

Dear _____:

This letter is to inform you that effective _____, you will no longer be eligible to continue your insurance coverage under the provisions of the Consolidated Omnibus Budget Reconciliation Act, or COBRA.

You have 180 days to obtain another source for your insurance before your eligibility to continue your present coverage under COBRA ends. For your own benefit, you should begin to research other options immediately, since there is usually a 30-day waiting period before your new insurance becomes effective.

If you have any questions or would like information about insurance options, please feel free to contact the Human Resource Department at 555-1111.

Sincerely,

Director of Human Resources

**NOTIFICATION OF EXPIRATION OF COBRA
CONTINUATION RIGHTS SAMPLE LETTER**

RE: Termination of COBRA Coverage

Dear John Doe:

You and your dependent(s) are no longer eligible to continue your insurance coverage under COBRA plan as of _____.

If you have any questions regarding your ineligibility to continue for insurance coverage under COBRA any longer, feel free to call the Human Resource Department at 555-1111 to discuss this situation.

Sincerely yours,

Director of Human Resources

Notice: Legal Advice Disclaimer

The purpose of these materials is not to act as legal advice but is intended to provide human resource professionals and their managers with a general overview of some of the more important employment and labor laws affecting their departments. The facts of each instance vary to the point that such a brief overview could not possibly be used in place of the advice of legal counsel.

Also, every situation tends to be factually different depending on the circumstances involved, which requires a specific application of the law.

Additionally, employment and labor laws are in a constant state of change by way of either court decisions or the legislature.

Therefore, whenever such issues arise, the advice of an attorney should be sought.



Scott Warrick, JD, MLHR, CEQC, SHRM-SCP

Scott Warrick Human Resource Consulting, Coaching & Training Services

Scott Warrick Employment Law Services

(614) 738-8317 ♣ scott@scottwarrick.com ♣ WWW.SCOTTWARRICK.COM

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Scott Warrick combines the areas of law and human resources to assist organizations in **"Solving Employee Problems BEFORE They Happen."** Scott uses his unique background of **LAW** and **HUMAN RESOURCES** to help organizations get where they want to go, which includes coaching and training managers and employees in his own unique, practical and entertaining style.

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Scott's academic background and awards include:

Capital University College of Law (Class Valedictorian (1st out of 233))

Master of Labor & Human Resources and B.A. in Organizational Communication: The Ohio State University

The Human Resource Association of Central Ohio's Linda Kerns Award for Outstanding Creativity in the Field of HR Management and the Ohio State Human Resource Council's David Prize for Creativity in HR Management

For more information on Scott, just go to www.scottwarrick.com