

THE EMPLOYERS' GUIDE TO **COBRA**



INTRODUCTION

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires most employers to offer continuation coverage to covered employees, their spouses, former spouses, and dependent children when group health coverage would otherwise be lost due to certain specific events (see “qualifying events” below). COBRA generally affects all group health plans maintained by private-sector employers with 20 or more employees.

COBRA continuation coverage is often more expensive than the amount active employees are required to pay for group health coverage. This is because the employer usually pays part of the cost of employees' coverage which can then be charged to individuals receiving continuation coverage after employment has ended. Due to the political climate prompted the Affordable Care Act (ACA), COBRA is less relevant since health insurance through the marketplace tends to be more affordable.

WHICH EMPLOYERS ARE COVERED?

****COBRA generally applies to a group health plans maintained by employers that have at least 20 employees on more than 50 percent of typical business days in the previous calendar year. These employers with 20 or more employees for at least half of the working days of the previous calendar year are subject to COBRA.**

Both full-time and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of a full-time employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full-time. For this calculation, part-time employees are considered fractions of full-time employees. This measure is calculated by dividing the number of hours worked by a part-time employee by the hours worked by a regular full-time.

WHEN DOES AN EMPLOYEE QUALIFY FOR COBRA?

Employers covered under COBRA are required to notify and offer continuation of group health benefits coverage for employees and qualified beneficiaries upon the occurrence of a “qualifying event.” An exception exists for plans sponsored by the Federal Government or by churches and some church-related organizations.

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***Although only companies with 20+ employees are subject to the federal COBRA regulations, many states have legislation requiring small employers (those not subject to COBRA) to provide insurance continuation to employees who become ineligible for group coverage. Such provisions, sometimes called mini-COBRA, often resemble the federal COBRA laws but differ in the details. You may want to contact an HR Professional or insurance broker to determine if you are meeting all applicable federal and state requirements. Check with your state insurance commissioner's office to see if such coverage is available to you.*

QUALIFIED BENEFICIARIES

COVERED EMPLOYEE

- Termination of employment (voluntary or involuntary) for reasons other than gross misconduct
- Reductions in hours of employment below the level required for coverage.

COVERED SPOUSE

- Death of the employee's spouse.
- Termination of the employee's spouse (for reasons other than gross misconduct)
- Reduction in the employee's spouse's hours of employment
- Divorce or legal separation from the employee's spouse
- Employee's spouse becomes eligible for Medicare

COVERED DEPENDENT CHILD

- Death of the parent employee.
- Termination of the parent employee for reasons other than gross misconduct.
- Reduction in parent employee's hours of employment.
- Parent employee's divorce or legal separation.
- Employee parent becomes eligible for Medicare.
- Dependent child ceases to be a dependent child under the group plan.

WHEN IS AN EMPLOYEE INELIGIBLE FOR COBRA?

- When an employee waives employer sponsored group coverage
- When the employer sponsored group health plan is canceled or terminated and not replaced
- When full payment is not received before 30 days from the end of a grace period
- When the employee is terminated for “gross misconduct” (this definition is very difficult to prove by the employer).

EMPLOYER RESPONSIBILITIES

Continuation coverage must be made available at a premium not exceeding 102% of the applicable premium (i.e. the cost for a similarly-situated employee), whether paid by the employer or employee and for the following time periods:

- 18 months: If coverage ended due to a reduction in hours or termination of employment for any reason other than gross misconduct o This would be 29 months if beneficiary is disabled
- 36 months: If coverage ended due to death, divorce, legal separation, eligibility for Medicare or cessation of dependent child coverage
- 36 months: If a second qualifying event (except termination, reduction of hours or bankruptcy) occurs after the initial 18 month coverage period

The coverage continuation offered must be identical to that presently offered under the plan to active employees in comparable professional classes and their family members. Often this is the same coverage offered immediately preceding the qualifying event. COBRA imposes various requirements upon employers and plan administrators to provide notice of eligibility and rights to COBRA in a timely fashion.

WHEN MUST I TAKE ACTION?

The COBRA process begins upon the occurrence of a qualifying event. Qualifying events are those that cause an individual to lose his or her group health coverage. The type of qualifying event determines who the qualified beneficiaries are for that event and the period of time that a plan must offer continuation coverage. It is permissible for a plan to elect to provide extended continuation coverage as COBRA establishes only the most nominal specifications.

QUALIFYING EVENTS

COVERED EMPLOYEE

- Termination of employment (voluntary or involuntary) for reasons other than gross misconduct
- Reductions in hours of employment below the level required for coverage.

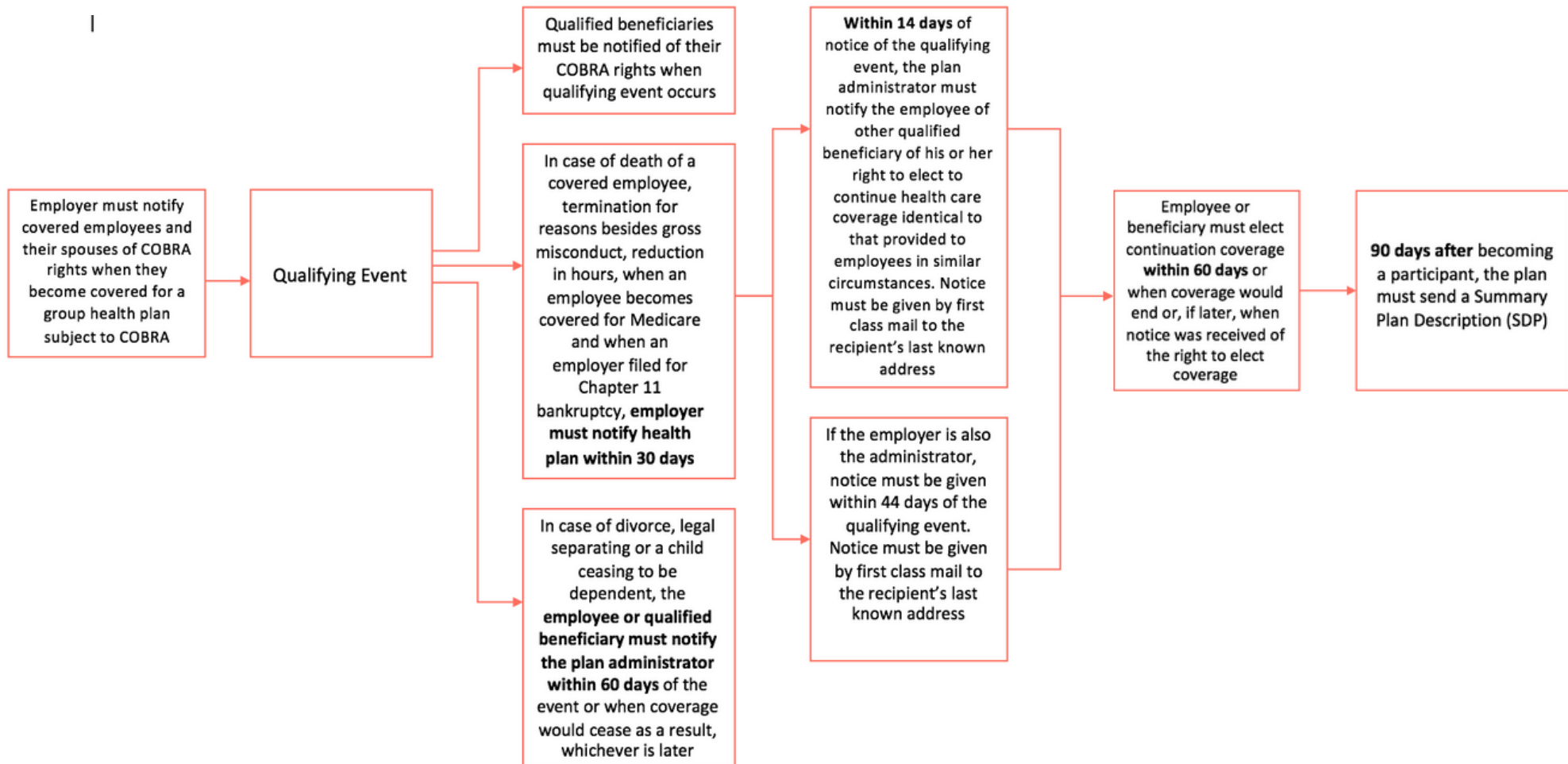
COVERED SPOUSE

- Death of the covered employee.
- Termination of covered employee (for reasons other than gross misconduct)
- Reduction in the hours worked by covered employee
- Divorce or legal separation from the employee's spouse from the covered employee
- Covered employee becomes eligible for Medicare

COVERED DEPENDENT CHILD

- Death of the parent employee.
- Termination of the parent employee for reasons other than gross misconduct.
- Reduction in parent employee's hours of employment.
- Parent employee's divorce or legal separation.
- Employee parent becomes eligible for Medicare.
- Dependent child ceases to be a dependent child under the group plan.

COBRA NOTICE REQUIREMENTS TIMELINE



PERTINENT FORMS

- COBRA Model General Notice (2014 Revisions): Issue this form when enrolling a new employee on your employer-sponsored health plan so they are aware of their rights and responsibilities when faced with the loss of coverage.
- COBRA Model Election Notice (2014 Revisions): Issue this form when an employee is faced with the loss of coverage to inform them of their right to continued coverage and other health care coverage options available.
- COBRA Rights, Acknowledgement of Receipt: Issue this form when an employee has coverage for him or herself plus any other family members and coverage is being terminated due to a qualifying event.
- COBRA Termination of Coverage Notice: Issue this form to notify any qualified beneficiary whose COBRA coverage terminates before the end of the maximum COBRA period.

ENFORCEMENT

Failure to comply with COBRA or give adequate notice exposes employers to a nondeductible excise tax of \$100 per day per qualified beneficiary with a maximum of \$200 per day per family. The employer or plan may also be held liable for the health care costs incurred by the beneficiary which would have been paid by the plan had COBRA been complied with.

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