COBRA Series, Part I: The Basics of COBRA

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QUICK FACTS

- COBRA provides certain individuals the right to elect to continue health coverage under an employer-sponsored plan.
- Certain events, called qualifying events (QE), will trigger an individual's right to elect COBRA continuation coverage.
- A qualified beneficiary who experiences a QE, will have the right to elect to continue coverage for up to either 18, 29 or 36 months depending on the particular QE.
- Employers must properly provide certain notices to participants and qualified beneficiaries.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) provides employees and their family members who would otherwise lose their health benefits, the right to elect to continue such coverage for a period of time under certain circumstances called qualifying events (QE). This article provides an overview of the important terms and concepts one must know to understand how COBRA coverage works.

Covered Employers

COBRA applies to group health plans sponsored by employers who employed 20 or more employees on at least 50% of its typical business days in the prior calendar year. Employers must count full- and part-time employees – with each part-time employee counting as a fractional employee based on the number of hours he or she worked divided by the number of hours an employee must work to be considered full-time.

COBRA applies to plans maintained by most private-sector and state and local governmental employers. The law does not apply to plans sponsored by the federal government or by churches and certain church-related organizations.

Eligibility for Cobra Benefits

A covered group health plan must offer COBRA continuation coverage to certain participants after a QE. A group health plan is any arrangement that an employer establishes or maintains to provide employees or their families with medical care, whether it is provided through insurance, by an HMO, out of the employer's assets (self-funded), or through any other means.

Qualified Beneficiaries

A qualified beneficiary is an individual who participated in a covered group health plan on the day before a QE and who is either an employee, the employee's spouse or former spouse, or the employee's dependent child. In certain cases of an employer's bankruptcy, a retired employee, the retired employee's spouse (or former spouse), and the retired employee's dependent children may be qualified beneficiaries. Additionally, any child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage will automatically be deemed a qualified beneficiary. Agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries.

Qualifying Events

QEs are certain events that normally would cause an individual to lose health coverage. The type of QE will determine who the qualified beneficiaries are and the maximum amount of time for which they may continue coverage under COBRA.

QEs occur in three major categories:

Employee

- Voluntary or involuntary termination of employment for reasons other than gross misconduct. COBRA does not define gross misconduct, and many courts have set a high bar for this exception. Generally ordinary misconduct, such as excessive absences or poor performance, will not support denying COBRA election rights. Because the employer bears the burden of defending a gross misconduct denial, and the costs of being wrong can be high, employers should consult qualified counsel before invoking the gross misconduct exception.
- Reduction in the number of hours of employment. Plan sponsors will need to coordinate COBRA with certain ACA rules regarding participants in a stability period tied to a previously completed look-back measurement period who switch to part-time from full-time. ACA generally requires plan sponsors to maintain coverage through the end of the stability period, so plan sponsors will need to carefully consider when a qualifying event occurs and when the COBRA coverage period begins.

Spouse

- Voluntary or involuntary termination of a covered employee's employment for any reason other than gross misconduct.
- Reduction in the hours worked by the covered employee.
- Covered employee becoming entitled to – not merely eligible for – Medicare.
- Divorce or legal separation from the covered employee.
- Death of the covered employee.

Child

The same events as for a spouse, and loss of eligible status under a plan's eligibility rules.

Cobra Coverage Maximum Duration

Certain events provide qualified beneficiaries the right to elect to continue coverage for up to 18 months:

- Voluntary or involuntary termination other than for gross misconduct.
- Reduction in hours to below the minimum required to participate in the employer's plan.
- Labor strike.
- Leaves of absence (the particulars of which can be complicated and will be addressed in our next COBRA Series installment).

Certain events provide qualified beneficiaries the right to elect to continue coverage for up to 29 months:

- Any QE that occurs to a qualified beneficiary who is considered disabled according to Social Security guidelines and COBRA rules.
- Individuals must be considered to have been disabled by Social Security at the time of the QE, not when COBRA is initiated.

Certain events provide the right to elect to continue coverage for up to 36 months:

- Employee's death.
- Employee's entitlement to Medicare.
- Divorce or legal separation from a covered employee.
- Family member no longer considered a dependent under the employer's plan (e.g., a covered child attains age 26).

Note that when a 36-month event occurs during a standard 18-month COBRA continuation period, spouses and dependents may extend COBRA continuation coverage for up to 36 months from the original QE date.

Cobra Administration

Plan sponsors to whom COBRA applies must provide covered employees and their families with the following specific notices intended to help them understand their rights and obligations under COBRA.

Summary Plan Description (SPD)

A plan's SPD must explain COBRA continuation rights in detail and must instruct participants and beneficiaries on the procedures for providing any required notice of a second QE while on COBRA continuation coverage. Further, the SPD must explain the rules for how to give the plan sponsor proper disability and recovery from disability notices. Since different QEs can produce different COBRA continuation coverage start dates, the SPD should describe specifically when continuation coverage will begin.

General Notice

Plan sponsors must provide a COBRA general notice (sometimes called the initial notice) to covered employees and spouses within the first 90 days of plan coverage. Group health plans can satisfy this requirement by including the general notice in the plan's SPD and giving the SPD to the employee and to the spouse within this time limit. The general notice must include:

- The name of the plan and the name, address, and telephone number of someone whom the employee and spouse can contact for more COBRA information.
- A general description of the continuation coverage provided under the plan.
- An explanation of what qualified beneficiaries must do to notify the plan of QEs or disabilities.
- An instruction to keep the plan administrator informed of participant and beneficiary addresses and the consequences of failing to do so.
- A statement that the general notice does not fully describe COBRA or the plan and that more complete information is available from the plan administrator and in the SPD.

Qualifying Event Notice

The employer, employee or beneficiary must notify the group health plan of the qualifying event, and the plan is not required to act until it receives an appropriate notice. Who must give notice depends on the type of qualifying event.

- The employer must notify the plan if the qualifying event is:
- Termination or reduction in hours of employment of the covered employee,
- Death of the covered employee,
- Covered employee becoming entitled to Medicare, or
- Employer bankruptcy.

The employer must notify the plan within 30 days after the event occurs.

The covered employee or one of the qualified beneficiaries must notify the plan if the qualifying event is:

- Divorce,
- Legal separation, or
- A child's loss of dependent status under the plan.

Group health plans must have procedures for how the covered employee or qualified beneficiaries can provide notice of these types of qualifying events. The plan can set a time limit for providing this notice, but the time limit cannot be shorter than 60 days, starting from the latest of:

- The date the qualifying event occurs,
- The date the qualified beneficiary loses (or would lose) coverage under the plan as a result of the qualifying event, or
- The date the qualified beneficiary is informed, through the furnishing of either the summary plan description or the COBRA general notice, of the responsibility to notify the plan and the procedures for doing so.

The procedures must describe how, and to whom, notice should be given, and what information must be included in the qualifying event notice. If one person gives notice of a qualifying event, the notice covers all qualified beneficiaries affected by that event.

After a plan administrator receives notice that a QE has occurred, it must provide a COBRA election notice to qualified beneficiaries, in-person, by first class mail or electronically, within 14 days.

COBRA Election Notice
A COBRA election notice allows a qualified beneficiary to elect continuation coverage. Each qualified beneficiary may independently elect COBRA coverage. A covered employee or the covered employee's spouse may elect COBRA coverage on behalf of all other qualified beneficiaries. A parent or legal guardian may elect on behalf of a minor child.

A plan sponsor must provide each qualified beneficiary at least a 60-day election period measured from the later of the date when coverage is lost or the date it provides a COBRA election notice.

The Department of Labor has developed a model COBRA Election Notice, which may be downloaded from the Department of Labor Employee Benefits Administration website. This model notice requires the plan administrator to fill in the appropriate plan information.

Notice of Unavailability of Coverage
If a plan sponsor determines that an individual is not entitled to elect COBRA continuation coverage, it must issue a notice of unavailability of coverage within 14 days after receiving an attempted COBRA election. The notice must explain the reason for denying the election.

Notice of Early Termination of Continuation Coverage
A plan sponsor must provide a notice of early termination of COBRA coverage when it terminates COBRA continuation coverage because:

- COBRA Premiums are not paid in full on a timely basis.
- The employer ceases to maintain any group health plan covering any employee.

- A qualified beneficiary begins coverage under another group health plan after electing continuation coverage.
- A qualified beneficiary becomes entitled to Medicare benefits after electing continuation coverage.
- A qualified beneficiary engages in conduct that would justify the plan in terminating coverage of a similarly situated participant or beneficiary not receiving continuation coverage (such as fraud).

A plan sponsor must provide a continuation coverage early termination notice as soon as practicable, and it must describe the date coverage will terminate, the reason for termination, and any rights the qualified beneficiary may have under the plan or applicable law to elect alternative group or individual coverage, such as a right to convert to an individual policy.

Key Takeaways

COBRA provides important benefits protections for plan participants who otherwise would lose coverage due to certain events. An employer plan sponsor must understand whether it must comply with COBRA, which participants and beneficiaries have COBRA election rights, how long COBRA continuation coverage can last, and what obligations it has to inform individuals of their COBRA rights. The overall concept of COBRA is simple; however, the many details of applying COBRA can get complicated. COBRA mistakes can be very expensive due to statutory penalties and potentially large medical claims an employer might have to pay. Thus, employer plan sponsors should take time to understand their COBRA responsibilities. If you have any questions regarding COBRA and how it affects you as a plan sponsor, please reach out to one of your EPIC team members.