

WHAT YOU NEED TO KNOW



## COBRA Notices

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires group health plans to provide notices to covered employees and their families explaining their COBRA rights when certain events occur. The various notices described below are subject to different timeframes and requirements under COBRA.

### Initial Notice

The initial notice, also referred to as the general notice, communicates general COBRA rights and obligations to each covered employee (and his or her spouse) who becomes covered under the group health plan. This notice is issued by the plan administrator within the first 90 days when coverage begins under the group health plan and informs the covered employee (and his or her spouse) of the responsibility to notify the employer within 60 days if certain qualifying events occur in the future.

The initial notice must include the following information:

- The plan administrator's contact information
- A general description of the continuation coverage under the plan
- An explanation of the covered employee's notice obligations, including notice of
  - The qualifying events of divorce, legal separation, or a dependent's ceasing to be a dependent
  - The occurrence of a second qualifying event
  - A qualified beneficiary's disability (or cessation of disability) for purposes of the disability extension)
- How to notify the plan administrator about a qualifying event
- A statement that that the notice does not fully describe continuation coverage or other rights under the plan, and that more complete information regarding such rights is available from the plan administrator and in the plan's summary plan description (SPD)

As a best practice, the initial notice should also:

- Direct qualified beneficiaries to the plan's most recent SPD for current information regarding the plan administrator's contact information.

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- For plans that include health flexible spending arrangements (FSAs), disclose the limited nature of the health FSA's COBRA obligations (because certain health FSAs are only obligated to offer COBRA through the end of the year to qualified beneficiaries who have underspent accounts).
- Explain that the spouse may notify the plan administrator within 60 days after the entry of divorce or legal separation (even if an employee reduced or eliminated the spouse's coverage in anticipation of the divorce or legal separation) to elect up to 36 months of COBRA coverage from the date of the divorce or legal separation.
- Define qualified beneficiary to include a child born to or placed for adoption with the covered employee during a period of COBRA continuation coverage.
- Describe that a covered child enrolled in the plan pursuant to a qualified medical child support order during the employee's employment is entitled to the same COBRA rights as if the child were the employee's dependent child.
- Clarify the consequences of failing to submit a timely qualifying event notice, timely second qualifying event notice, or timely disability determination notice.

Practically speaking, the initial notice requirement can be satisfied by including the general notice in the group health plan's SPD and then issuing the SPD to the employee and his or her spouse within 90 days of their group health plan coverage start date.

If the plan doesn't rely on the SPD for furnishing the initial COBRA notice, then the plan administrator would follow the U.S. Department of Labor (DOL) rules for delivery of ERISA-required items. A single notice addressed to the covered employee and his or her spouse is allowed if the spouse lives at the same address as the covered employee and coverage for both the covered employee and spouse started at the time that notice was provided. The plan administrator is not required to provide an initial notice for dependents.

## Qualifying Event Notice

The qualifying event notice informs the plan administrator that a qualifying event occurred. The type of qualifying event determines who must give notice. If the qualifying event is termination (for reasons other than gross misconduct) or reduction in hours of employment, death of the covered employee, employee's entitlement to Medicare, or employer's bankruptcy, then the employer must notify the plan administrator within 30 days from the date of the qualifying event. However, if the qualifying event is divorce, legal separation, or a child's loss of dependent status, then the covered employee or qualified beneficiary must notify the plan administrator of the qualifying event within 60 days of the *later* of:

1. The date of the qualifying event
2. The date that coverage would be lost because of the qualifying event
3. The date on which the employee or qualified beneficiary is informed of the notice requirement through a plan's SPD or the initial COBRA notice

Also, the covered employee or qualified beneficiary must notify the plan administrator of a second qualifying event within 60 days from the date of the second qualifying event.

For a notice of disability determination, the covered employee or qualified beneficiary must notify the plan administrator within 60 days from the later of the:

- Date of the Social Security Administration disability determination,
- Date of qualifying event, or

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- Date of loss of coverage,

and within 18 months from the date of the qualifying event.

For a notice of disability cessation, the qualified beneficiary must notify the plan administrator within 30 days after the date that the Social Security Administration determines that the qualified beneficiary is no longer disabled.

## Election Notice

The election notice communicates the specific COBRA rights and obligations based on the specific qualifying event and explains how to elect COBRA continuation coverage. This notice must be provided to the qualifying beneficiary within 14 days after the plan administrator receives notice of the qualifying event. For employer-notice events, when the employer is the plan administrator, notice must be provided within 44 days after the date of qualifying event, or date of loss of coverage, if the plan provides for delayed employer notice. A mailed election notice is considered furnished as of the mailing date.

The qualified beneficiary must choose whether to elect COBRA coverage at least 60 days of the *later* of:

1. The date the election notice is provided, or
2. The date on which the qualified beneficiary would otherwise lose coverage due to the qualifying event.

COBRA provides a minimum election period. A plan can specify a longer election period.

Please be aware that several courts have determined that the COBRA minimum election period can be tolled or suspended when a qualified beneficiary is incapacitated during the election period.

The election notice must include the following information:

- The qualifying event
- The identification of each qualified beneficiary
- The plan coverage termination date
- Name of the plan under which continuation coverage is available
- A statement that:
  - Each individual who is a qualified beneficiary regarding the qualifying event has an independent right to elect continuation coverage
  - A covered employee or qualified beneficiary who is the spouse of a covered employee (or was the spouse of the covered employee on the day before the qualifying event occurred) may elect continuation coverage on behalf of all other qualified beneficiaries regarding the qualifying event; and
  - A parent or legal guardian may elect continuation coverage on behalf of a minor child
- How to elect continuation coverage, including the election period expiration date
- Consequences for waiving or failing to elect continuation coverage, including an explanation that the decision of whether to elect continuation coverage will affect the future rights of qualified beneficiaries and where the qualified beneficiary can find additional information about such rights
- The type of coverage available, including when coverage would start, or referencing the plan's SPD for this information

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- Premium amounts, due dates, qualified beneficiaries' rights to pay on a monthly basis, payment grace periods, payment remittance address, and consequences of untimely payment or nonpayment
- Continuation coverage period length, continuation coverage termination date, and any events that might cause continuation coverage to be terminated earlier than the end of the maximum period
- When the maximum period of continuation coverage may be extended due to a second qualifying event or Social Security Administration disability determination and the length of such extension
- Qualified beneficiaries' responsibility to provide notice of a second qualifying event, notice of a Social Security Administration disability determination, and notice that a beneficiary has been determined to no longer be disabled, including a description of the plan's procedures for providing notices, including notice deadlines and consequences for failing to provide notices
- The plan administrator's contact information
- A statement of the importance of keeping the plan administrator informed of the current addresses of all participants or beneficiaries under the plan who are or may become qualified beneficiaries
- A statement that the notice does not fully describe continuation coverage or other rights under the plan and that more complete information regarding rights is available in the plan's SPD or from the plan administrator

## Notice of Early Termination

The notice of early termination communicates the coverage termination date and the reason for loss of coverage. It is given to qualified beneficiaries whenever they lose COBRA continuation coverage for reasons other than reaching the end of the maximum coverage period.

COBRA continuation coverage may be terminated early because:

- Premiums are not fully and timely paid.
- The employer ceases to maintain any group health plan.
- The qualified beneficiary begins coverage under another group health plan after electing COBRA.
- The qualified beneficiary becomes entitled to Medicare after electing COBRA.
- The disabled qualified beneficiary – whose disability caused an extension of the COBRA maximum coverage period – is determined not to be disabled.
- The qualified beneficiary's COBRA continuation coverage is terminated for cause.

The notice of early termination must be given as soon as the decision to terminate COBRA coverage is made and should include the date coverage will end, reason for termination, and rights the qualified beneficiary may have under the plan.

## Notice of Unavailability

The notice of unavailability communicates that either continuation coverage or extension of continuation coverage is unavailable. This notice is given to the qualified beneficiaries if the plan administrator determines that they are not entitled to COBRA coverage or an extension of the COBRA maximum coverage period even though they experienced a qualifying event. This notice must be provided within the period for providing an election notice. The notice of unavailability must explain why continuation coverage was denied.

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## Open Enrollment Materials

Because qualified beneficiaries are entitled to participate in any open enrollment period that is available to active employees, an employer should send open enrollment materials to qualified beneficiaries at the same time as it provides open enrollment materials to its active employees.

## Multiemployer Plans

Multiemployer plans are subject to special rules for COBRA notices since they may adopt their own time limits for the qualifying event and event notices. For example, multiemployer plans may take longer than 30 days to notify the plan administrator of the qualifying event if the plan has a provision for a longer notification period. In addition, multiemployer plans may also choose not to require employers to provide qualifying event notices for employment terminations or reductions of hours if the plan administrator assumes responsibility for determining when the qualifying event occurred. The special multiemployer plan rules should be explained in the plan documents and SPDs.

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