

# COBRA

## Consolidated Omnibus Budget Reconciliation Act

Provided by: Clarke & Company Benefits, LLC

### Federal Continuation Coverage Laws

PROVISION	REQUIREMENTS
<b>Covered Employers and Health Plans</b>	<p>COBRA applies to group health plans maintained by:</p> <ul style="list-style-type: none"><li>• Private-sector employers with <b>20 or more employees</b>;</li><li>• Employee organizations; and</li><li>• State or local governments.</li></ul>
<b>Qualified Beneficiaries</b>	<p>A qualified beneficiary is generally an employee, spouse or dependent child covered by a group health plan on the day before a qualifying event.</p> <p>In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary.</p>
<b>Eligibility</b>	<p>COBRA continuation coverage is available upon the occurrence of a qualifying event that would, except for the COBRA continuation coverage, cause a qualifying beneficiary to lose his or her health care coverage.</p>
<b>Plan Coverage</b>	<p>Qualified beneficiaries must be offered coverage that is identical to that which is available to similarly situated beneficiaries who are not receiving COBRA coverage under the plan (generally, the same coverage that the qualified beneficiary had immediately before qualifying for continuation coverage).</p> <p>A change in the benefits under the plan for the active employees will also apply to qualified beneficiaries. Qualified beneficiaries must be allowed to make the same choices given to non-COBRA beneficiaries under the plan, such as during periods of open enrollment by the plan.</p>



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### Qualifying Events

Qualifying events are certain events that would cause an individual to lose health coverage. The type of qualifying event will determine who the qualified beneficiaries are and the amount of time that a plan must offer the health coverage to them under COBRA.

#### **Qualifying Events for Employees:**

- Voluntary or involuntary termination of employment for reasons other than gross misconduct (18 months)
- Reduction in the number of hours of employment (18 months)

#### **Qualifying Events for Spouses:**

- Voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct (18 months)
- Reduction in the hours worked by the covered employee (18 months)
- Covered employee becoming entitled to Medicare (36 months)
- Divorce or legal separation of the covered employee (36 months)
- Death of the covered employee (36 months)

#### **Qualifying Events for Dependent Children:**

- Loss of dependent child status under the plan rules (36 months)
- Voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct (18 months)
- Reduction in the hours worked by the covered employee (18 months)
- Covered employee becoming entitled to Medicare (36 months)
- Divorce or legal separation of the covered employee (36 months)
- Death of the covered employee (36 months)

The Family and Medical Leave Act (FMLA) requires an employer to maintain coverage under any group health plan for an employee on FMLA leave under the same conditions coverage would have been provided if the employee had continued working. Coverage provided under the FMLA is *not* COBRA coverage, and FMLA leave is *not* a qualifying event under COBRA. However, a COBRA qualifying event may occur when an employer's obligation to maintain health benefits under the FMLA ceases, such as when an employee notifies an employer of his or her intent not to return to work.

	<p>COBRA establishes required periods of coverage for continuation health benefits. A plan, however, may provide longer periods of coverage beyond those required by COBRA.</p> <p><b>18 months</b>—COBRA beneficiaries generally are eligible for group coverage during a maximum of 18 months for qualifying events due to employment termination or reduction of hours of work.</p> <p><b>29 months</b>—Disability can extend the 18-month period of continuation coverage for a qualifying event that is a termination of employment or reduction of hours. To qualify for additional months of COBRA continuation coverage, the qualified beneficiary must:</p> <ul style="list-style-type: none"> <li>• Have a ruling from the Social Security Administration (SSA) that he or she became disabled within the first 60 days of COBRA continuation coverage; and</li> <li>• Send the plan a copy of the SSA ruling letter within 60 days of receipt, but prior to expiration of the 18-month period of coverage.</li> </ul> <p>If these requirements are met, the entire family qualifies for an additional 11 months of COBRA continuation coverage. Plans can charge 150 percent of the premium cost for the extended period of coverage.</p> <p><b>36 months</b>—Certain qualifying events, or a second qualifying event during the initial period of coverage, may permit a beneficiary to receive a maximum of 36 months of coverage.</p> <p><b>36 months</b>—Under COBRA, participants, covered spouses and dependent children may continue their plan coverage when they would otherwise lose coverage due to divorce (or legal separation) for a maximum of 36 months. A qualified beneficiary must notify the plan administrator of a qualifying event within 60 days after divorce or legal separation. After being notified of a divorce, the plan administrator must give notice, generally within 14 days, to the qualified beneficiary of the right to elect COBRA continuation coverage.</p>
<b>Early Termination of Coverage</b>	<p>COBRA coverage may terminate before the end of the maximum continuation period if one of the following events occurs:</p> <ul style="list-style-type: none"> <li>• Premiums are not paid on a timely basis.</li> <li>• The employer ceases to maintain any group health plan.</li> <li>• After the COBRA election, coverage is obtained with another employer group health plan that does not contain any exclusion or limitation with respect to any pre-existing condition of the beneficiary. However, if other group health coverage is obtained prior to the COBRA election, COBRA coverage may not be discontinued, even if the other coverage continues after the COBRA</li> </ul>

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	<p>election.</p> <ul style="list-style-type: none"><li>After the COBRA election, a beneficiary becomes entitled to Medicare benefits. However, if Medicare is obtained prior to COBRA election, COBRA coverage may not be discontinued, even if the other coverage continues after the COBRA election.</li></ul>
<b>Notice Requirements</b>	<p>Health plan administrators must provide an <b>initial general notice</b> when group health coverage begins.</p> <p>When a qualifying event occurs, health plan administrators must provide an <b>election notice</b> regarding rights to COBRA continuation benefits to each qualifying beneficiary who loses plan coverage in connection with the qualifying event.</p> <p>Employers must notify their plan administrators of a qualifying event within <b>30 days</b> after an employee's death, termination, reduced hours of employment or entitlement to Medicare that causes an employee to lose health benefits. A qualified beneficiary must notify the plan administrator of a qualifying event within <b>60 days</b> after divorce or legal separation or a child's ceasing to be covered as a dependent under plan rules.</p> <p>The plan administrator must provide notice to plan participants and beneficiaries of their right to elect COBRA coverage (election notice) within <b>14 days</b> after the administrator has received notice from the employer. Where the employer is also the plan administrator and the qualifying event is one for which the employer is required to notify the plan administrator, the employer must provide the qualified beneficiary with an election notice within <b>44 days</b> of the date of the qualifying event (or the date on which the qualified beneficiary loses coverage as a result of the qualifying event, if the employer uses the extended notice rule).</p> <p>The individual must respond to this notice and elect COBRA coverage by the <b>60th day</b> after the written notice is sent or the day health care coverage ceased, whichever is later. Otherwise, the employee will lose all rights to COBRA benefits.</p> <p>Spouses and dependent children covered under the health plan have independent rights to elect COBRA coverage upon employee's termination or reduction in hours.</p>
<b>Premium Payments</b>	<p>Beneficiaries may be required to pay for COBRA coverage. The premium cannot exceed <b>102 percent</b> of the cost to the plan for similarly situated individuals who have not incurred a qualifying event, including both the portion paid by employees and any portion paid by the employer before the qualifying event.</p> <p>For qualified beneficiaries receiving the 11-month disability extension of coverage, the premium for those additional months may be increased to 150 percent of the plan's total cost of coverage.</p>

	<p>COBRA premiums may be increased if the costs to the plan increase, but generally must be fixed in advance of each 12-month premium cycle. The plan must allow individuals to pay premiums on a monthly basis if the individual asks to do so. In addition, the plan may allow the individual to make payments at other intervals (weekly or quarterly).</p> <p>The initial premium payment must be made within <b>45 days</b> after the date of the COBRA election by the qualified beneficiary. Payment generally must cover the period of coverage from the date of COBRA election retroactive to the date of the loss of coverage due to the qualifying event. Premiums for successive periods of coverage are due on the date stated in the plan with a minimum 30-day grace period for payments. Payment is considered to be made on the date it is sent to the plan.</p> <p>If premiums are not paid by the first day of the period of coverage, the plan has the option to cancel coverage until payment is received and then reinstate coverage retroactively to the beginning of the period of coverage.</p> <p>If the amount of the payment made to the plan is made in error but is not significantly less than the amount due, the plan is required to notify the individual of the deficiency and grant a reasonable period (for this purpose, 30 days is considered reasonable) to pay the difference. The plan is not obligated to send monthly premium notices.</p>
<b>Conversion Rights</b>	Some plans allow participants and beneficiaries to convert group health coverage to an individual policy. If this option is generally available from the plan, a qualified beneficiary who pays for COBRA coverage must be given the option of converting to an individual policy at the end of the COBRA continuation coverage period. The option must be given to enroll in a conversion health plan within 180 days before COBRA coverage ends. The premium for a conversion policy may be more expensive than the premium of a group plan, and the conversion policy may provide a lower level of coverage. The conversion option, however, is not available if the beneficiary ends COBRA coverage before reaching the end of the maximum period of COBRA coverage.
<b>Applicable Statutes</b>	IRC § 4980B, ERISA §601 <i>et seq.</i>
<b>Government Agency Contact</b>	Departments of Labor and the Treasury (private sector plans) and the Department of Health and Human Services (public sector plans). More information on COBRA coverage is available from the <a href="#">Department of Labor</a> .

*This chart is provided to you for general informational purposes only. It broadly summarizes state and federal statutes under COBRA, but does not include references to other legal resources unless specifically noted. Please seek qualified and appropriate counsel for further information and/or advice regarding the application of the topics discussed herein to your employee benefits plans.*