

Consolidated Omnibus Budget Reconciliation Act (COBRA)

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
1610 University Avenue
Knoxville, TN 37921-6741
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

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Consolidated Omnibus Budget Reconciliation Act (COBRA)

Reference Number: MTAS-487

"COBRA" stands for Consolidated Omnibus Budget Reconciliation Act of 1986 [1] (29 U.S.C. §§ 1161–1168 and 42 U.S.C. §§ 300bb-1–300bb-8). Upon occurrence of a qualifying event, this federal law (along with the Affordable Care Act (ACA)) requires municipalities with 20 or more employees to continue health coverage, at the employee's expense, for a certain period at the group rate. The Affordable Care Act, however, has not changed an employer's obligation to offer COBRA to qualified beneficiaries experiencing a qualifying event. Qualifying events include but are not limited to:

- Termination of employment (except for gross misconduct)
- Death of the covered employee
- Reduction in work hours
- Divorce

Once the qualifying event occurs, the employee or qualified beneficiaries must be given at least a 60 day notice to elect continuation of health care coverage. The period for which coverage can be continued varies, depending on the qualifying event. The notice must advise the ex-employee of assistance available from the state Department of Social Services. T.C.A. §4-3-1404.

Complete Guide to COBRA

Reference Number: MTAS-1538

For an updated guide to COBRA (Consolidated Omnibus Budget Reconciliation Act of 1986) click on any or all of the sections below to obtain the specific information you want. To print off the complete guide, click on view PDF section on this page.

Background and Legislation

Reference Number: MTAS-893

Background

The year was 1985, and America faced a huge budget deficit. Add to that, more and more Americans were finding themselves uninsured and being denied care at their community hospitals. To address the growing budget deficit and uninsured rate, Congress enacted the Consolidated Omnibus Budget Reconciliation Act (COBRA) in 1986.

Landmark Federal Legislation

Congress passed COBRA on April 7, 1986. Among other things, COBRA amended the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code, and the Public Health Service Act (PHSA), all of which mandated that most group health plans offer a continuation of health insurance when employees and beneficiaries would otherwise lose group health coverage

Public Health Service Act (PHSA)

The PHSA contains the provisions of the Consolidated Omnibus Budget Reconciliation Act that govern continuation of coverage under government-sponsored group health plans.

The COBRA statute contains provisions that bridge the gap to group health coverage created when employees experience certain life changes. COBRA allows qualified employees and beneficiaries the ability to continue group health insurance after losing coverage due to certain "qualifying events." Prior to this statute becoming law, employees and their dependents were at risk of losing group health coverage when the employee carrying health insurance changed jobs, divorced, or experienced other qualifying events. COBRA requires a temporary continuation of health benefits at the group rate, which generally is the entire cost of continuation coverage, including the employee contribution plus the employer contribution plus any administration fee.

Intent of Legislation

While the intent of the legislation seemed simple — give workers the chance to continue their health insurance under circumstances that would normally cause them and their dependents to lose coverage — the result was cumbersome legislation that requires health plan administrators to perform a complex series of actions to ensure compliance with COBRA regulations. Employers and plan administrators are urged to use caution administering COBRA and to document carefully the timeliness of all notices sent or received.

COBRA & Local Government Health Plans

Reference Number: MTAS-894

While ERISA generally does not govern the administration of local government health plans, amendments to the Public Health Service Act (PHSA) provide that local governments offer the continuation of coverage. State and local government health plans are subject to the continuation provisions contained in PHSA Public Health Service Act) but not the provisions contained in ERISA or the Code. PHSA provides virtually identical coverage requirements with the exception of financial penalties or an enforcement scheme. However, courts do look to ERISA-COBRA cases for guidance with PHSA-COBRA administration and rulings.

Eligibility for COBRA Coverage

Reference Number: MTAS-1550

To be eligible for COBRA continuation coverage, a qualified beneficiary must be enrolled in the employer's group health plan **on the day before** the qualifying event takes place. Simply stated, if a person is not enrolled in a plan, there is no coverage to lose. But once a person is a qualified beneficiary, he or she may be able to enroll previously non-covered individuals. A "qualified beneficiary" can be one of the following:

- A "covered employee" defined as a current or former employee covered under a group health plan;
- The spouse of a covered employee; and/or
- The dependent child of a covered employee.

Two groups of people who can never be qualified beneficiaries are (1) non-resident aliens with no U.S. source of income and (2) individuals who are not otherwise qualified beneficiaries who become covered under a group health plan because of another qualified beneficiary's election. Any relative of these non-resident aliens also is not a qualified beneficiary solely because of the relationship to the non-resident alien.

Qualified Beneficiary

Reference Number: MTAS-1551

A qualified beneficiary (QB) may be any employee, former employee, spouse or dependent child who was covered under the group plan on the day before the qualifying event date. In certain situations, a retired employee and his or her dependents also may be considered QBs.

Qualified Beneficiary (QB)

QBs are individuals who are eligible to continue coverage based on certain qualifying events. Typically, this is the employee as well as any covered dependent(s) such as a spouse or child(ren). For COBRA purposes, each covered person is considered a separate QB.

QBs may include:

- Employee (current and former)
- Employee's spouse

- Employee's dependent child (includes QMCSO*)
- Employee's adopted child born to or placed for adoption during COBRA period
- Retired employees and dependents

***Qualified Medical Child Support Order**

The regulations specify that self-employed persons, agents, contractors and corporate directors are covered employees. However, these people are considered covered employees only if the employer maintains a plan covering traditional, common-law employees.

Covered Persons - Not Qualified Beneficiaries

Reference Number: MTAS-895

Certain individuals may be added to a qualified beneficiary's health plan coverage but not be entitled to the same rights as a qualified beneficiary. For example, a former dependent child of a covered employee could enroll under a group health plan as a qualified beneficiary, marry, opt to cover a new spouse, have a child and opt to cover the child all within 36 months of COBRA continuation coverage. Thus an employee's grandchild could be enrolled in an employer's group health plan under COBRA but not as a qualified beneficiary. The only way the grandchild could become covered is if the former dependent child, a qualified beneficiary, so elects. The former dependent child's new spouse would not have any election rights, nor would the grandchild.

Another group of individuals who could become covered under COBRA continuation coverage, but who are not qualified beneficiaries, are former qualified beneficiaries. For example, employee Smith is married and terminates employment but elects to continue only single coverage. His spouse declines to continue any coverage. During a subsequent open-enrollment period, Smith enrolls his spouse. If the couple is divorced within the 18-month continuation period, Smith's spouse could not continue health benefits because she is not a qualified beneficiary.

Qualifying Events Requiring COBRA

Reference Number: MTAS-896

The following list of qualifying events should trigger the COBRA notification process.

- Death of a covered employee
- Voluntary or involuntary termination of the covered employee's employment (except for gross misconduct)
- Reduction of hours worked by covered employee
- Divorce or legal separation of the covered employee from the employee's spouse
- Employee's entitlement to Medicare
- A dependent child ceasing to be a dependent under the eligibility requirements (i.e., age, student status, marriage)
- An employer's bankruptcy

Second Qualifying Events

A second qualifying event is a qualifying event that occurs during the 18-month period following the date of any employee's termination or reduction in hours. The beneficiary of that second qualifying event will be entitled to a total of 36 months of continued coverage. The period will be measured from the date of the loss of coverage caused by the first qualifying event.

According to direct information from the U.S. Department of Health and Human Services:

Second qualifying events may include the death of the covered employee, divorce or legal separation from the covered employee, the covered employee becoming entitled to Medicare benefits (under Part A, Part B or both), or a dependent child ceasing to be eligible for coverage as a dependent under the group health plan.

The following conditions must be met in order for a second event to extend a period of coverage

1. The initial qualifying event is the covered employee's termination or reduction of hours of employment, which calls for an 18-month period of continuation coverage
2. The second event that gives rise to a 36-month maximum coverage period occurs during the initial 18-month period of continuation coverage (or within the 29-month period of coverage if a disability extension applies)
3. The second event would have caused a qualified beneficiary to lose coverage under the plan in the absence of the initial qualifying event
4. The individual was a qualified beneficiary in connection with the first qualifying event and is still a qualified beneficiary at the time of the second event
5. The individual meets any applicable COBRA notice requirement in connection with a second event, such as notifying the plan administrator of a divorce, or a child ceasing to be a dependent under the plan within 60 days after the event.

If all conditions associated with a second qualifying event are met, the period of continuation coverage for the affected qualified beneficiary (or beneficiaries) is extended from 18 months (or 29 months) to 36 months.

COBRA Premiums

Reference Number: MTAS-897

COBRA premiums typically are set at 102 percent of the total cost of the plan. The plan can include the premium costs paid by employees and the employer, plus an additional two percent administration fee.

COBRA Premium

This is the amount the QB pays for continuation coverage. It usually is equivalent to the total employer premium plus a two percent administration charge.

Example COBRA Rates

Note: The numbers below are **hypothetical** and have no relation to actual COBRA premiums. This is for illustration purposes only.

Active Employee Rates

(Individual Health Coverage)

Employee Pays.....\$100 per month
 Employer Pays.....\$500 per month
 Total Cost.....\$600 per month

COBRA Rates (Individual Health Coverage)

Employee pays \$600 per month plus administration fees totaling \$612 per month. This includes employee and employer contributions plus a COBRA administration fee.

The Employer Contribution.....\$500 per month
 The Employee Contribution.....\$100 per month
 Two Percent Administration Fee.....\$12 per month
 Total COBRA Cost.....\$612 per month

This means group health coverage for COBRA participants usually is significantly more expensive than health coverage for active employees, since the employer usually pays a part of the premium for active employees, and COBRA participants generally pay the entire premium themselves. However, by law coverage under COBRA cannot exceed 102 percent of the actual cost of the coverage to the group plan. The one exception comes in the case of disabled beneficiaries who receive the 11-month extension, in which case the premium can be as high as 150 percent. In the case that a QB is eligible for an additional 11 months (beyond the original 18 months) of COBRA he could be charged up to 150 percent of the cost of the coverage for those additional 11 months.

Nevertheless, continuation of group health coverage under COBRA ordinarily is less expensive than individual health coverage and generally offers a richer benefit with less risk.

The plan must allow employees and QBs to pay the COBRA premiums on a monthly basis and may allow the employee to make payments on another schedule such as quarterly or weekly.

COBRA premiums generally are increased if the costs of health benefits or administration fees increase, but they typically are fixed for at least the coming year.

Benefits Subject to COBRA

Reference Number: MTAS-898

Qualified beneficiaries must be offered coverage identical to that available to active employees and their families covered under the group health plan. In other words, a qualified beneficiary generally is entitled to the same coverage he or she had immediately before qualifying for continuation of coverage under COBRA.

If a former employee had medical, dental, vision, and prescription benefits under single or multiple health plans, this person would have the right under COBRA to elect to continue coverage in any or all of those plans. Any change in coverage under the plans for active employees also applies to individuals covered under COBRA, and COBRA participants must be allowed to make the same choices given to non-COBRA participants in the health plan.

Duration of COBRA Coverage

Reference Number: MTAS-1536

Qualifying events are those that cause the qualified beneficiary to lose coverage under the plan.

As shown in the following schedule, qualified beneficiaries generally can continue health coverage for up to 18 months for themselves and their families. **In some cases, coverage is extended to 36 months.** COBRA coverage can be terminated before these maximum periods if premiums are not paid on time or if the employer ceases to maintain a group health plan for its employees. Some plans allow COBRA participants to convert group health coverage to an individual policy when the COBRA continuation period ends. The option to enroll in a conversion health plan must be given at least 180 days before COBRA coverage ends and may vary by state and type of plan offered.

| Qualifying Event | Qualified Beneficiaries | Maximum Period of Continuation |
|---|--|--------------------------------|
| Termination (for reasons other than gross misconduct) | Employee Spouse Dependent children | 18 Months* |
| Employee enrollment in Medicare | Spouse Dependent children | 36 Months |
| Divorce or legal separation | Spouse Dependent children | 36 Months |
| Death of employee | Spouse Dependent children | 36 Months |
| Loss of dependent child status under plan eligibility rules | Dependent children | 36 Months |

* In certain circumstances QBs entitled to 18 months of COBRA may become entitled to a disability extension of 11 months (for a total maximum of 29 months) or an extension of 18 months due to the occurrence of a second qualifying event (for a total maximum of 36 months).

Open Enrollment and Transfer Period

Reference Number:

MTAS-1537

Plan sponsors may forget that a change in the benefits under the plan for active employees will apply also to qualified beneficiaries. It is important to note that 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. This means that all COBRA beneficiaries must receive the same opportunity to change plans or enroll in new plans as if they were active employees or plan members.

FMLA and COBRA

Reference Number: MTAS-899

Family and medical leave itself is not a qualifying event under COBRA, as employers are required by FMLA to maintain group health insurance coverage for employees on leave. If an employee on FMLA leave notifies the organization that he/she does not intend to return to work, however, a COBRA qualifying event may occur. Additionally, if additional unpaid leave is used after exhaustion of FMLA, a COBRA qualifying event may occur, also.

Some of the notifications described below may not apply if you are administering your COBRA programs in-house. The bolded notices represent the critical notifications that employers often must design. Sample forms are available through MTAS.

REQUIRED SCHEDULE OF NOTICES

| REQUIRED COBRA NOTICES | RESPONSIBLE PARTY | TIME FRAME |
|--|--|---|
| <u>General COBRA Notice</u> | Plan administrator to covered employee and spouse | Within 90 days of coverage becoming effective |
| <i>Consider new hires, open enrollment and special enrollment periods, qualifying events (marriage or addition of domestic partner), implementation of new plan(s), rehires. Consider your cafeteria plans and EAP plans as well.</i> | | |
| <u>Employer Qualifying Event Notice</u> | Employer to plan administrator | 30 days after QE |
| <i>Includes plan information, covered employee, qualifying event and date of qualifying event. Employers have 30 days following date of QE to notify plan administrators. Plan administrators have 14 days following notice of QE to notify QBs. Employers who act as plan administrators have 44 days from the date of the event to notify QBs.</i> | | |
| <u>Employee Qualifying Event Notice(s)</u> | Employee or qualified beneficiary to plan administrator | 60 days after QE |
| <i>Plan sponsors should make sure a reasonable written procedure is in place for employees and QBs to follow at the time of a QE. Employees and QBs then have the responsibility to notify plan administrator within 60 days of a QE. Employees' and QBs' failure to follow the reasonable notice requirements may result in denial of continuation of coverage.</i> | | |
| <u>Election Notice</u> | Plan administrator to covered employees and QBs | 14 days after notice of QE or 44 days (for some QEs) |
| <i>This is the actual offering of COBRA, which provides the employee and QBs the opportunity to elect coverage.</i> | | |
| <u>Notice of COBRA Unavailability</u> | Plan administrator to employees and beneficiaries who provide notice of QE | Same as election notice |
| <i>New notice required by the May 27, 2004, Final Notice Rules. This notice must be sent when a plan determines that a QB is not eligible for COBRA.</i> | | |
| <u>Notice of Early Termination of COBRA</u> | Plan administrator to covered employees and QBs | As soon as practicable once termination of coverage is determined by plan administrator |
| <i>New notice required by the May 26, 2004, Final Notice Rules. This notice must be sent to notify QBs of a termination of benefits if benefits terminate earlier than the full COBRA period. In some cases, this may be combined with HIPAA Certificate of Credible Coverage, which also is required upon termination of benefits.</i> | | |

General COBRA Notices

Reference Number: MTAS-900

The COBRA notices are listed below. Click on the notice you want or if you want to view or print all notices click on the "view PDF of this section".

Initial COBRA Notice

Reference Number: MTAS-1539

The initial notice usually is the employee's and QB's first notification of COBRA under a group health plan. It typically occurs at the time coverage begins and lets a QB know that he or she loses coverage due to certain qualifying events and that COBRA will be offered.

The plan administrator must send the notice to the employee and spouse within 90 days of new coverage. This notice is commonly issued in the plan's Summary Plan Description (SPD), but the

employer must ensure the plan's SPD meets timing guidelines and contains minimum requirements of the notice distribution rules. Employers may want to consider posting the SPD on their Internet/Intranet site as well.

The general notice must be addressed to both employee and spouse. If the spouse resides at a separate address, a notice should be sent separately to the spouse. If dependents reside in a different household, a separate notice also should be sent to those dependents residing separately. If a spouse's coverage becomes effective on a different date than that of the employee, a separate notice must be sent to the spouse.

Hand delivering the notice to employees is acceptable but does not meet the requirements for spousal notification procedures. If an employee or spouse experiences a qualifying event within 90 days of being covered and the general notice has not been sent, it should be sent out at the same time as the election notice. If administrators are using a generic notice they must be sure to include the name and specific contact information of the person whom the qualified beneficiary may contact with further questions and request additional plan information.

- **DOL MODEL AVAILABLE – YES** (model notices can be found here: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra> [2])

COBRA Qualifying Event Notices

Reference Number: MTAS-1540

Employer and Plan Administrator Qualifying Event Notice

Must be sent from employer to plan administrator within 30 days after the qualifying event and must contain information about the plan, covered employee, and qualifying event, including type and date of event. Employers have 30 days following the date of the QE to notify plan administrators. Plan administrators have 14 days to then notify the QBs, and if the employer is also the plan administrator the notice must be provided within 44 days of the QE.

- **DOL MODEL AVAILABLE – NO**

Employee Qualifying Event Notices

Employees and QBs must notify plan administrators of qualifying events. In order for employees and QBs to understand their responsibility employers must ensure that employees and QBs are notified of the "reasonable procedures" for QBs to follow when furnishing the notice(s). It is advisable for employers and plan administrators to include these notice requirements in the summary plan description and general notice (if sent separately). It also is advisable to remind employees frequently of their responsibilities (i.e., notifying plan administrator when there is an address change or QE). Employees and QBs must notify the plan administrator within 60 days of the qualifying event.

- **DOL MODEL AVAILABLE – NO**

COBRA Election Notice

Reference Number: MTAS-1541

Perhaps the most important of all COBRA notices, the election notice, is sent out at the time of the qualifying event and advises employees and QBs of their right to continue coverage under COBRA.

In order for this to go smoothly, the preceding employee qualifying event notices should have been applied, and the employee should have notified the plan administrator of the qualifying event (if applicable).

The election form generally is several pages long and often broken up into different sections to help with clarity. The election notice should contain all of the information individuals need to make a COBRA election.

The regulations require that the election notice contain the following information:

- Plan name, address, contact information, etc.;
- Qualifying event and date;

- Identification of qualifying beneficiaries either by name or status (statement of independent election rights);
- Date coverage is scheduled to terminate;
- Explanation of how to elect COBRA coverage;
- Description of COBRA coverage;
- Description of circumstances under which coverage may be extended;
- Information and procedures for employees and QBs to provide notice of second QE;
- COBRA premium information;
- Information about importance of current addresses; and
- How to get more information and complete plan information.

The election notice must be sent within 14 days of the event date or loss of coverage by the plan administrator to the covered employees and QBs. In 2004, the rules solidified the long-standing practice that when the employer is also the administrator of the plan, the notice must be sent within 44 days of the event. This 44-day period, however, applies only to terminations of employment, reduction in hours (can include leave without pay or layoff), death of employee, and employer bankruptcy events. In cases of divorce, legal separation or dependent ineligibility, the notice must be sent within 14 days of the employer receiving notice.

- **DOL MODEL AVAILABLE – YES** (model notices can be found here: <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra> [2])

Notice of Unavailability

Reference Number: MTAS-901

If a plan administrator receives notice of a qualifying event, or even a second qualifying event, and determines that the individual is not entitled to COBRA or a disability extension, the plan administrator also must provide a notice to the individual explaining the reason for the denial. This notice does not apply to events in which the employer is required to notify the plan administrator such as termination of employment, reduction in work hours, death or enrollment in Medicare. This must be sent out in the same time frame as the plan would have sent the election notice.

The Department of Labor provides examples of triggering events that would require that the new notice of unavailability be sent. Examples include when the employee or QB fails to notify the employer of one of the above events or does not notify the employer/plan administrator in a timely manner. The employer/plan administrator then would be required to send the notice describing the reason for denying continuation of coverage within 14 days.

- **DOL MODEL AVAILABLE – NO**

Notice of Early Termination

Reference Number: MTAS-1542

This notice mandates that the plan administrator send to covered employees and QBs a notice in the event their COBRA coverage terminates before the maximum COBRA coverage period.

The law states that this be sent as soon as practicable.

This notice is sent from the plan administrator to covered employees and QBs and should include the reason for and termination date of health benefits any rights the QB has to elect alternative group or individual coverage.

An example of the need for a notice of early termination is an employer terminating the health plan which means, in effect, an individual's COBRA coverage would terminate earlier than the full-time period for which COBRA was offered to that individual.

- **DOL MODEL AVAILABLE – NO**

HIPAA's Effect on COBRA

Reference Number: MTAS-902

HIPAA

The Health Insurance Portability and Accountability Act of 1996 was passed after COBRA went into effect. HIPAA is not directly related to COBRA although HIPAA does make some key changes to COBRA's continuation of coverage. The Health Insurance Portability and Accountability Act (1966) (HIPAA)

HIPAA'S Effect on COBRA While HIPAA and COBRA are separate laws, HIPAA does affect COBRA continuation coverage. Effective January 1, 1997, HIPAA made changes to COBRA continuation coverage in the areas of disability extension, definition of qualified beneficiary, and the duration of COBRA continuation coverage. HIPAA's main purpose was to provide protection against pre-existing condition exclusions if a person avoids a gap in insurance coverage longer than 63 days (including COBRA coverage).

HIPAA made three primary changes to COBRA:

Continuation period

Under HIPAA legislation, disabled individuals (as deemed so under the Social Security Act) are entitled to 29 months of COBRA continuation coverage if they become disabled during the first 60 days of COBRA coverage. HIPAA also ensures that if the individual entitled to the disability extension has non-disabled family members who are entitled to COBRA continuation coverage, those non-disabled family members also are entitled to the 29 months disability extension. Under the prior law, individuals had to be deemed disabled at time of the initial QE in order to qualify for the 29 months.

Coverage termination

HIPAA made a coordinating change to the COBRA rules so that if a group health plan limits or excludes benefits for pre-existing conditions but because of the new HIPAA rules those limits or exclusions would not apply to (or would be satisfied by) an individual receiving COBRA continuation coverage, the plan providing the COBRA coverage can stop making the coverage available.

Continuation coverage for children

COBRA rules were revised so that children adopted by the covered employee during the COBRA period are considered QBs.

Certificate of Creditable Coverage

Reference Number: MTAS-1543

HIPAA certificates of creditable coverage are no longer required as of January 1, 2015. Effective January 1, 2015, group health plans and insurers are no longer required to issue a certificate of creditable coverage ("HIPAA Certificate") to individuals who lost group health plan coverage.

Compliance and Liability Areas

Reference Number: MTAS-903

While this section is intended to give you a brief overview of COBRA, most human resources professionals know that there are literally endless ways to be considered "non-compliant."

Here are some tips on sound COBRA administration.

The burden of proof rests on you, the employer. Even if you have outsourced your COBRA function, there still is plenty of room for error. At the end of the day, the courts will want to know if the notice was sent within the proper time and if it contained the legal minimum requirements. Employers are obligated to prove they fulfilled the COBRA notice requirements. If challenged, employers must prove they mailed

the COBRA notice(s), not that the notice has been received. Courts have deemed first class mail sufficient for COBRA purposes. A first class mailing is considered received unless it was returned to the sender.

Postage date is key. Timeliness of mailings (on both ends) is based on postmark date. If an employee fails to pay the premium payment on time coverage is subject to termination. However, if the payment was postmarked within the 30-day grace period, the premium should be considered paid. If the employee/QB elects to hand deliver the payment, it must be in your hands (the plan administrator) by the end of the grace period. Sometimes this means the plan administrator receives, opens, and processes the payment after the 30-day grace period has expired. For purposes of counting days, Saturdays and Sundays count. However, if the last day of the election period ends on a weekend or holiday, you are required to extend the date until the end of the next business day.

Make a good faith effort to communicate. Employers are not required to send monthly billing statements, warning letters or lapse notices. Such notices are considered a courtesy and are not required by law; however, improving communication with current employees and future COBRA QBs can go a long way toward avoiding complaints that can turn into formal grievances.

Remember, QBs have the right to change their minds within their election period. A QB can change his mind and revoke the waiver of coverage at any time during the election period. The waiver is not required by law, but if you provide one be sure to include language indicating that the QB has the right to revoke the initial election at any time during the election period.

Last but not least, be careful when dealing with spouses of former employees. An ex-employee cannot waive COBRA continuation rights on behalf of his/her spouse. The spouse has the individual right to receive COBRA information and make a determination on coverage. Additionally, in many divorce cases the judge mandates that one spouse be financially responsible for health coverage on the other spouse for a period of time. This does not mean an ex-spouse is eligible to stay on the plan as a regular spouse. It generally means the spouse is required to pay COBRA premiums on behalf of the other spouse or assist the spouse in getting coverage elsewhere.

COBRA and W-2 Reporting

Reference Number: MTAS-1546

Health care reform also has a provision that requires employers to report the cost of group health plan coverage on each employee's W-2 form each year. Cost is generally to be determined by taking the COBRA premium and subtracting the two percent administrative fee (if applicable). The Department of Labor notes that health care reform did not (1) eliminate or change the COBRA rules; (2) extend the COBRA time periods; or (3) extend the premium subsidy law.

COBRA Authority

Reference Number: MTAS-1547

COBRA continuation coverage laws are administered by several agencies. The departments of Labor and Treasury have jurisdiction over private-sector health group health plans. The Department of Health and Human Services administers the continuation coverage law as it affects public-sector health plans. The Department of Labor's interpretive and regulatory responsibility is limited to the disclosure and notification requirements of COBRA.

**U.S. Department of Labor
Employee Benefits Security Administration
Division of Technical Assistance and Inquiries
200 Constitution Avenue NW, Suite N-5619
Washington, DC 20210
<http://www.dol.gov> [3]**

The Internal Revenue Service, Department of the Treasury, has issued regulations on COBRA provisions relating to eligibility, coverage and premiums in 26 CFR Part 54, Continuation Coverage Requirements Applicable to Group Health Plans. Both the departments of Labor and Treasury share

jurisdiction for enforcement of these provisions. For a table of contents and questions under the regulations, see <http://www.law.cornell.edu/cfr/text/26/54.4980B-0> [4].

The Centers for Medicare and Medicaid Services offer information about COBRA provisions for public sector employees. You can contact the centers at:

Centers for Medicare and Medicaid Services

7500 Security Boulevard

Mail Stop S3-16-26

Baltimore, MD 21244

(410) 786-3000

http://cciio.cms.gov/programs/protections/cobra/cobra_fact_sheet.html [5]

Links:

[1] <https://www.dol.gov/general/topic/health-plans/cobra>

[2] <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra>

[3] <http://www.dol.gov/>

[4] <http://www.law.cornell.edu/cfr/text/26/54.4980B-0>

[5] http://cciio.cms.gov/programs/protections/cobra/cobra_fact_sheet.html

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