



Compliance and Liability Areas

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,

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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.

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