

COBRA

Back to Basics with Compliance



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Introduction to COBRA

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) permits an individual to continue their group health plan coverage following certain events. Prior to COBRA, workers and their dependents frequently experienced gaps in health care coverage. The enactment of COBRA required employers with at least 20 employees that offer group health plan coverage to offer continuation of that coverage following certain work or life events including employment termination or reduction of hours worked, or for spouses and dependents, upon the death of or divorce from the covered employee. Under COBRA, an employee, spouse, or dependent can generally continue group health plan benefits for 18 or 36 months, depending on the reason for the loss of coverage.

This Back to Basics Guide introduces COBRA. This Guide is a basic introduction to COBRA, and it does not contain all of the details of compliance. Instead, we link to additional Gallagher resources for further exploration of the topic, including the following:

- [An Employer's Guide to COBRA](#)
- [COBRA Record Retention Requirements](#)

Employers and Benefits Subject to COBRA

Employers Subject to COBRA

COBRA applies to employers that offer group health plan coverage and have 20 or more employees. This includes private sector employers, such as for-profit corporations, partnerships, and tax-exempt organizations, and public employers, such as state and local governments. Church plans are not subject to COBRA, though some church plans choose to provide coverage continuation rights voluntarily or are required to do so by state law.

Employers with fewer than 20 employees are not subject to COBRA; however, state continuation rights may apply to fully-insured plans. Most state continuation laws follow federal COBRA, but some states may be more generous or restrictive with their continuation requirements.

Generally, plans that are established or maintained by an Indian tribal government or an agency or instrumentality of a tribal government are exempt from COBRA. The Indian tribal government plan is exempt, though, only if all of the plan participants are employees of the tribal government and substantially all of their services as employees

are in the performance of essential governmental functions, but not in the performance of commercial activities. For example, an Indian tribal community's operation of a casino might have a plan for its employees. This plan would be subject to COBRA (and ERISA) because the employees' activities are in the performance of commercial activities, rather than essential governmental functions. For more information, see [Determining Whether Your Organization is Subject to COBRA](#).

Plans Subject to COBRA

Only group health plans are subject to COBRA. Examples include:

- Medical;
- Vision;
- Dental;
- Prescription drug;
- Health flexible spending accounts (FSAs);
- Health reimbursement arrangements (HRAs); and
- Employee assistance programs (EAPs) and wellness programs that provide medical care.

TIP

When non-health benefits, such as short-term disability (STD), long-term disability (LTD), life insurance, etc., provide medical components, such as embedded mental health or EAPs that provide medical care, COBRA applies to the health component of the non-health benefit.

Non-health benefits such as STD, LTD, health savings accounts (HSAs), dependent care assistance programs (DCAPs), worker's compensation, and accidental death and dismemberment (AD&D) plans are not subject to COBRA.

For more information, see [Determining Which Benefits are Subject to COBRA](#).

Key Terms to Understand COBRA

Applicable Premium. The applicable premium is the amount a qualified beneficiary is required to pay for COBRA coverage. Generally, the amount cannot exceed 102% (or 150% in the case of an extension due to disability) of the applicable premium, which is the total cost of coverage for active employees and their families. The COBRA applicable premium includes both the portions paid by the employee and the employer.

Continuation Period. The continuation period is the maximum length of time health coverage will continue under COBRA. This is also known as the "maximum coverage period." It begins from the date of the loss of coverage caused by the qualifying event and continues for a limited period of either 18, 29, or 36 months, depending on the type



of qualifying event. For more information, see our [COBRA Maximum Coverage Period and Qualified Beneficiary Chart](#).

Determination Period. COBRA premiums must be set for a 12-month period known as the “determination period.” A COBRA determination period can be any 12-month period, which could be the same as the plan year, or could be different. The determination period is designed to ensure that a COBRA qualified beneficiary has some assurance not only of the COBRA premium amount, but also that the amount will not be subject to frequent fluctuations.

Election Notice. The election notice describes a qualified beneficiary’s rights to continuation coverage and the steps they must take to elect coverage. The plan administrator must provide a separate notice to each qualified beneficiary within 14 days of notice of a qualifying event. Employers are encouraged to use the DOL’s [model election notice](#) to ensure compliance with regulatory content requirements.

General (Initial) Notice. Describes COBRA rights and obligations to covered employees, spouses, and dependents. The notice must be provided to covered employees and spouses within 90 days of becoming covered under the plan. Employers are encouraged to use the DOL’s [model general notice](#) to ensure compliance with regulatory content requirements.

Loss of Coverage. A loss of coverage is any change in plan coverage terms and conditions as a result of a COBRA qualifying event. This can include changes to contributions, coinsurance, switching medical plans, etc., but note that loss of coverage must occur as a result of a COBRA triggering event for an individual to be entitled to COBRA. If no loss of coverage has occurred (or the loss is due to an event not covered by COBRA), then COBRA does not apply.

Medicare Entitlement. If a termination of employment or reduction of hours occurs within 18 months after the employee becomes entitled to Medicare, the COBRA maximum coverage period for spouse and dependents is the longer of 36 months from the date of the Medicare entitlement or 18 months from the date of the qualifying event. This extension occurs regardless of whether Medicare entitlement would cause a loss of coverage and regardless of whether the employee elects COBRA.

Notice of Early Termination. While continuation coverage must generally be made available for a specified period of time (18, 29, or 36 months), coverage may terminate early for specific reasons (e.g., premiums not paid on a timely basis; the employer (and other employers in the controlled group) ceases to maintain a group health plan; or a



qualified beneficiary engages in conduct such as fraud that justifies coverage termination). When coverage terminates prior to the end of the maximum coverage period, the plan must provide a notice of early termination to the qualified beneficiary.

Notice of Unavailability. If the plan administrator determines that an individual believing they are entitled to COBRA is not entitled to COBRA coverage, the plan administrator's decision must be explained in a Notice of Unavailability. Notice must be sent to the individual within 14 days of notice of the qualifying event.

Qualified Beneficiary. A qualified beneficiary is an individual who loses group health plan coverage due to a COBRA triggering event and is entitled to an offer of COBRA. This can include an employee, the employee's spouse, or the employee's dependent child who had group health coverage on the day before a qualifying event occurred. In certain instances, a qualified beneficiary can include a retired employee, the retired employee's spouse, or the retired employee's dependent child. A child born to, or placed for adoption with, a covered employee during a period of COBRA continuation coverage is also considered to be a qualified beneficiary. Domestic and civil union partners are not considered qualified beneficiaries although they can be added as dependents of another qualified beneficiary if eligible under the plan.

Qualifying Event. A qualifying event is a loss of coverage caused by one of seven events, which triggers the requirement to offer COBRA. The type of triggering event determines who is a qualified beneficiary and the amount of time they must be offered continuing coverage. For a qualifying event to exist, there must be both a triggering event (e.g., termination of employment) and a resulting loss of coverage.

Small Employer Exception. Employers with fewer than 20 employees on a typical business day during the preceding calendar year are not subject to COBRA. State continuation rights may still apply.

State Continuation laws (Mini COBRA). Many states require some level of coverage continuation for covered individuals. Typically, these laws apply to fully insured plans of employers with fewer than 20 employees (and in some cases self-insured church plans). Some states follow the same or similar requirements as COBRA, while others are more limited in scope or more generous than federal COBRA requirements.

Social Security Administration (SSA) Disability Extension. COBRA coverage can be extended from 18 months to a maximum of 29 months for a disabled qualified beneficiary who is terminated or has a reduction in working hours. This is described more fully below under Extensions of COBRA.



Qualified Beneficiaries and Qualifying Events

Qualified Beneficiaries

An employer subject to COBRA (i.e., one with at least 20 employees and offering group health coverage) must offer COBRA coverage to qualified beneficiaries when they experience a qualifying event. Determining whether an individual is a qualified beneficiary is significant because each qualified beneficiary has an independent right to enroll in COBRA coverage. In other words, one qualified beneficiary's decision to enroll will not affect another qualified beneficiary's ability to enroll in COBRA coverage.

Any covered employee and that employee's spouse and/or dependent children who were enrolled in the group health plan the day before a qualifying event is a qualified beneficiary. A child born to, or placed for adoption with, a covered employee during a period of COBRA continuation coverage is also considered to be a qualified beneficiary. The term "covered employee" refers to any individual who is covered under the employer's plan because that individual performs services for the employer. This means other individuals covered by the plan, such as an agent, independent contractor, self-employed person, and/or corporate director is a qualified beneficiary who may be entitled to COBRA if they lose coverage due to one of the triggering events.

While a spouse may be a COBRA qualified beneficiary, a domestic partner or civil union partner cannot be. This does not mean that a domestic partner cannot have COBRA coverage. Rather, if a plan covers domestic partners, an employee that is a qualified beneficiary would have to add the domestic partner as a dependent in order to provide the domestic partner continued coverage.

In contrast to a domestic partner, the child of a domestic partner may be a qualified beneficiary. COBRA does not define the term "dependent children" so the plan must rely on its own definition of the employee's dependents to determine who is a qualified beneficiary. If a group health plan provides coverage to a domestic partner's children as dependents of the employee, then those children will be COBRA qualified beneficiaries and will have independent election rights.

For more information, see [Identifying Individuals Eligible for COBRA Continuation Coverage](#).

Qualifying Events

COBRA must be offered after a qualified beneficiary experiences a qualifying event. A qualifying event is defined as a triggering event that causes a qualified beneficiary to experience a loss in coverage. If there is a triggering event and no subsequent loss of

coverage, there is NOT a qualifying event. For example, if a full-time employee experiences a reduction in hours to part-time, but continues to be eligible for coverage as a part-time employee, a qualifying event has not occurred despite the fact that a reduction in hours is a triggering event.

The seven types of triggering events are below. If there is an accompanying loss of coverage, it constitutes a qualifying event.

- **Termination of employment.** This can be voluntary (e.g., employee quits or retires) or involuntary (e.g., layoffs). In limited circumstances, when an employee is terminated for gross misconduct, an employer is not required to offer COBRA. The gross misconduct standard is difficult to meet. Employers should discuss the facts with counsel before choosing not to offer COBRA due to an employee's conduct.
- **Reduction of hours.** This could include moving from full-time to part-time or the occurrence of a strike, lockout, or reduction in force.
- **Divorce or legal separation.** A divorce is a triggering event. Legal separations are triggering events only in states that recognize legal separation. Additionally, the triggering event occurs when the divorce or legal separation is final based upon a court decree, not when an individual files for divorce or separation.
- **Death of covered employee.** The death of a covered employee is a triggering event for a spouse and children covered by the plan.
- **Dependent child ceases to be a dependent under the terms of the plan.** For example, if a group health plan covers employees' children until age 26, the child experiences a qualifying event when the child reaches age 26 and loses eligibility for coverage under the plan.
- **Covered employee's entitlement to Medicare.** Under Medicare, "entitled" means that the employee is eligible for and enrolled in Medicare. Note, though, that Medicare entitlement cannot be a triggering event for active employees and their spouses and dependents who lose coverage when the employer is subject to the Medicare Secondary Payer rules, which apply to employers with at least 20 employees. Therefore, from a practical perspective, this will only apply to small employer plans and retiree-only plans.
- **Employer's bankruptcy.** The employer's bankruptcy under Chapter 7 or Chapter 11 of the Bankruptcy Code is a triggering event only for certain retirees and their families, but not for all qualified beneficiaries.

Following is a summary of the triggering events and the individuals to whom they apply.

Covered Employee	Covered Spouse	Covered Dependent
- Termination of employment - Reduction of hours - Employer's bankruptcy*	- Termination of employment - Reduction of hours - Divorce/legal separation - Death of employee - Covered employee's entitlement to Medicare - Employer's bankruptcy*	- Termination of employment - Reduction of hours - Divorce/legal separation - Death of employee - Dependent child ceases to be dependent under the plan - Covered employee's entitlement to Medicare - Employer's bankruptcy*

*Does not apply to non-federal governmental employers.

Enrollment Rights

COBRA coverage is not automatic and must be affirmatively elected. After a qualified beneficiary experiences a qualifying event, the qualified beneficiary must be given a minimum of 60 days to make an election. The election period must start no later than the date coverage ends due to the qualifying event and continue at least 60 days after the date coverage ends or, if later, 60 days after the date of the election notice. This means the election period could be longer than 60 days if the plan administrator provides the notice later than the date coverage ends. While 60 days is the minimum number of days, plans may allow a longer period of time, if desired. In any event, the plan documents and any communications or notices to participants about COBRA elections should specify the election period.

During annual enrollment or in the case of HIPAA special enrollment events, qualified beneficiaries have the same rights as active employees to add or drop family members, change coverage, and change carriers, if available. If, during annual enrollment, a qualified beneficiary adds a family member who was not previously covered, that added family member does not become a qualified beneficiary. The only exception to this rule is children added at birth or adoption, who are considered qualified beneficiaries despite not being enrolled in the plan during the initial qualifying event.

After the proper notices have been issued following the occurrence of a qualifying event, qualified beneficiaries must affirmatively elect COBRA in order for continuation coverage to begin. The election period must:

- Start no later than the date the plan coverage terminates due to the qualifying event;
- Last at least 60 days; and
- Continue until at least 60 days after the date coverage terminates, or if later, 60 days after the date of the election notice from the plan administrator to the qualified beneficiary.

Plans may require that COBRA elections be made in writing on the plan administrator's form. The election must be sent to the plan administrator or its designee. An election is considered to be made on the date it is sent to the plan administrator.

Coverage, Premiums, and Payments

Coverage

COBRA coverage is retroactive to the date of the qualifying event. COBRA requires continuation coverage to be identical to the coverage that the qualified beneficiaries were receiving immediately before the qualifying event. Although the coverage must be the same at the beginning of the COBRA continuation period, qualified beneficiaries may change to a different coverage type or add or drop dependents during annual enrollment or during a HIPAA special enrollment period.

Premiums

Employers are not required to pay for COBRA coverage and may instead charge a premium to cover the cost. The maximum amount that an employer may charge for COBRA coverage is 102% of the applicable premium (i.e., 102% of the total cost to the plan for similarly situated active employees in the selected coverage level). If the qualified beneficiary is disabled and elected COBRA coverage for any or all of the 29 months allowed, the maximum amount an employer may charge increases to up to 150% of the applicable premiums for months 19 through 29.

The COBRA premium is calculated differently based on whether the plan is fully insured or self-insured. For a fully insured plan, the applicable premium is the premium charged by the insurance company for similarly situated active employees (i.e., the total premium). For self-insured plans, the applicable premium is determined through an actuarial determination. When there were no significant changes in coverage or number of participants, self-insured plans may use the past-cost method by using the prior determination period premium plus an adjustment for cost of living. A plan must

determine the COBRA premium prior to the plan year and, once the premium is set, it cannot change during the year, except in certain circumstances.

Permitted Changes During Determination Period

- Increase for a disability extension (up to 150% of applicable premium)
- Increase premium to maximum permissible amount (if plan is currently requiring less than 102% or 150%)
- Increase due to selection of more expensive coverage (e.g., open enrollment)

Payments

The initial COBRA payment is due no later than 45 days after the qualified beneficiary's election. Note that, due to the 60-day election period and the 45 days that the participant has to pay, payment could be made on the 105th day and still be timely. There are no grace periods for this deadline and if the first payment is missed, the plan does not have to provide COBRA coverage. Subsequent payments must be allowed to be made monthly and, if subsequent payments are late, the plan administrator must allow a 30-day grace period before coverage is terminated for missed payment. Note that if the plan has a grace period longer than 30 days, it must allow that longer time frame as a grace period for qualified beneficiaries.

For more information, see [Determining and Collecting COBRA Premiums](#).

Notices and Deadlines

Plans use COBRA notices to make qualified beneficiaries aware of their COBRA rights. The DOL provides a model initial notice and election notice. The DOL encourages, but does not require, plans to use the model notices.

Notice of a Qualifying Event

The plan administrator must establish reasonable procedures for individuals to furnish a triggering event notice to the plan. These procedures must be in the general notice and also in the plan's summary plan description (SPD) and they must allow at least 60 days for the individual to provide notice. In the case of divorce or legal separation, a single notice sent by or on behalf of the covered employee or any of the qualified beneficiaries satisfies the notice requirement.

Notice of Qualifying Events

Employer must provide notice to the plan within 30 days:

- Termination of employment for the covered employee;
- Reduction in working hours for the covered employee;
- Death of the covered employee;
- Medicare entitlement for the covered employee; or
- Employer bankruptcy

Qualified Beneficiary must provide notice to the plan within 60 days:

- Divorce or legal separation; or
- Child's loss of dependent status according to the plan terms

General (Initial) Notice

The plan administrator generally must provide the general notice to each covered employee and covered spouse within 90 days of the coverage beginning. If a plan administrator is not designated in the plan documents, the compliance burden for providing the general notice falls to the plan sponsor, which is usually the employer.

Specifically, the plan administrator must provide the general notice to each covered employee and covered spouse by the earlier of:

- Date the election notice must be furnished;
- 90 days after the coverage begins; or
- 90 days after the date that the group health plan becomes subject to COBRA.

The general notice may be delivered by mail, hand delivery, or electronically, if the DOL conditions around electronic delivery are met. (See [Electronic Communication Rules](#)

TIP

The requirement to provide the general notice is on a plan-by-plan basis. Therefore, if the covered employee or spouse changes plans, a new general notice should be provided. Changing plans means an actual change to a new plan, not simply changing options within the same plan.

[and Sample Language](#).) For employees with work-related access to the employer's electronic delivery system, meeting the DOL requirements may be simple, but the electronic delivery rules are more complicated for other qualified beneficiaries, like spouses. Further, DOL regulations allow the plan administrator to mail a single notice the employee and spouse if it is addressed to both and they reside in the same place. If the plan administrator uses electronic delivery for the employee, but is not able to use it for the spouse, the employer will have to send a

separate notice to the spouse. Thus, as a practical matter, electronic delivery generally won't make sense. In terms of timing, the initial notice is considered to be "furnished" by a plan administrator as of the date of mailing, if mailed by first-class, certified, or express mail, or as of the date of electronic transmission, if transmitted electronically. A hand-delivered notice is considered delivered once the notice is actually received. For more detailed information, see [DOL Model General Notice](#).

Election Notice

The plan administrator must furnish the election notice upon a qualifying event to each qualifying beneficiary within 14 days of receiving the qualifying event notice from the employer or the qualified beneficiary. A special timing rule applies where the plan administrator and employer are the same entity – there are 30 days to provide the notice of a qualifying event and 14 days from the receipt of that notice to provide the election notice to the qualified beneficiary. To address this, the special rule provides that the employer has 44 days from the date of the qualifying event to provide the election notice to the qualified beneficiary and there is then no need for the employer to provide a notice of qualifying event to the plan administrator. For more information, see: [DOL Model Election Notice](#).

Notices and Deadlines		
Notice	Party	Deadline
General/Initial Notice <i>Outlines employer and qualified beneficiary (QB) responsibilities</i>	Plan Admin. to QB	Within 90 days of enrollment (including special enrollment)
Election Notice <i>Describes election and obligations. Provide after receiving notice of qualifying event (QE)</i>	Plan Admin. to QB	Within 14 days after notification of the QE (employer has 30 days to notify the plan of terminations and reductions of hours)
QB to Plan Admin. <i>QB informs for all events but termination or reduction in hours</i>	QB to Plan Admin.	Within 60 days of the QE or date coverage would have been lost, whichever is later
Early Termination <i>Failure to pay, plan termination, access to other coverage</i>	Plan Admin. to QB	As soon as practicable
Notice of Unavailability <i>Where individual expects coverage, but is not entitled to coverage</i>	Plan Admin. to QB	Same as election notice

Early Termination Notice

When COBRA coverage will end early, employers must provide termination notice to each affected qualified beneficiary. Although not specifically required, as a best practice, plan administrators should also provide notice to other individuals who are not qualified beneficiar(ies) to avoid potential disputes. There is no model early termination notice, but the notice must be understandable by the average plan participant and must include the:

- Reason for early termination;
- Date coverage will be terminated; and
- A description of the qualified beneficiary's right, if any, to elect conversion coverage.

The early termination notice must be sent as soon as practicable following the decision to terminate coverage.

Notice of Unavailability

The notice of unavailability is only required for an individual who is expecting COBRA coverage, but whom the plan administrator has determined is not entitled to it. There is no model notice of unavailability, but notice explaining COBRA coverage is unavailable must be provided to any individual who provides a notice that a qualifying event or second qualifying event has occurred or a notice that an individual has been determined by the SSA to be disabled, and the plan administrator determines that the individual is not entitled to COBRA coverage. For more information, see [Complying with COBRA Notice Obligations](#).

Maximum Periods, Extensions, and Early Termination

Maximum Coverage Period

For qualified beneficiaries who elect COBRA, employers must make coverage available for the full duration of the maximum coverage period. The amount of time the maximum coverage period extends varies based on the qualifying event.

Termination of employment	Permanent SSA disability	Employee death	Employee Bankruptcy
Reduction of hours		Divorce or legal separation	
		Loss of dependent status	
		Employee entitled to Medicare	
18 months	29 months	36 months	Lifetime for certain retirees

The maximum coverage period is generally measured from the date coverage is lost as a result of a triggering event. For example, for an employee who is terminated mid-month (triggering event) but their coverage does not end until the end of the month (coverage loss), the maximum coverage period would begin at the coverage loss date.

Extensions of COBRA Coverage

The maximum coverage period can sometimes be extended as follows:

- Extension for disability;
- Extension for multiple qualifying events; and
- Medicare entitlement, in certain situations.

Disability Extension. In the event of a disability, the COBRA maximum coverage period is extended from 18 months to 29 months if a qualified beneficiary is found to be disabled by the SSA during the first 60 days after a termination of employment or reduction of hours. The extension is available to any qualified beneficiary, but applies only if the qualified beneficiary notifies the plan administrator of the SSA determination prior to the end of the original 18-month period, and within 60 days after the later of:

- The date of the employee's termination of employment or reduction of working hours;
- The date of the qualified beneficiary's coverage loss; or
- The date the qualified beneficiary is informed of the obligation to provide notice of disability determination and the plan's procedures for providing such notice.

Multiple Qualifying Events Extension. COBRA can also be extended when a qualifying beneficiary who elected COBRA coverage after an 18-month qualifying event (e.g., reduction of hours) then experiences a 36-month qualifying event (e.g., divorce). This extension applies only if the second qualifying event would have caused its own loss of coverage, had the second event happened first. These extensions only apply to a spouse or dependent.

Potential Medicare Entitlement Extension.

If a termination of employment or reduction of hours occurs within 18 months after the employee becomes entitled to Medicare, the COBRA maximum coverage period for spouse and dependents is extended to the longer of 36 months from the date of the Medicare entitlement or 18 months from the date of

TIP

Extension of the continuation period for Medicare entitlement applies regardless of whether Medicare entitlement would cause a loss of coverage under the plan and regardless of whether the employee elects COBRA.



termination or reduction in hours. For example, if a covered employee becomes entitled to Medicare 8 months before their employment termination date, COBRA continuation for their spouse and children can last up to 36 months after the date of Medicare entitlement, which is equal to 28 months after the date of the qualifying event (36 months minus 8 months). Otherwise, when the qualifying event is the end of employment or reduction of the employee's hours of employment, COBRA continuation coverage generally lasts for only up to a total of 18 months.

Early Termination of COBRA Coverage

The COBRA maximum coverage period is the longest possible period COBRA coverage will be available under the particular circumstances, but sometimes COBRA coverage will end earlier than the maximum coverage period. COBRA coverage can be terminated early if the:

- Qualified beneficiary fails to pay the COBRA premium;
- Qualified beneficiary enrolls in other group health plan coverage after their COBRA election;
- Qualified beneficiary enrolls in Medicare after the COBRA start date;
- Qualified beneficiary is determined to no longer be disabled by the SSA;
- Plan sponsor (and its controlled group members) terminates all of its group health plans; or
- Qualified beneficiary's actions result in termination for cause (e.g., fraudulent claims).

For more information, see [Determining the Length of COBRA Continuation Coverage](#).

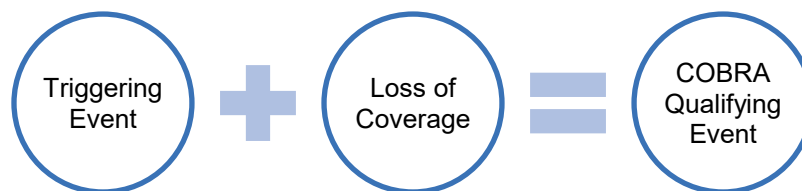
Common Issues

Ignoring Model Notices. The DOL changes its model general and election notices from time to time. Further, litigation against employers has stemmed from deficient notices, particularly election notices. Using the DOL model notices is a best practice to avoid inadvertently omitting necessary information. Third-party COBRA vendors may use their own notices, which sometimes omit required information. Careful review of the provided notices prevents lawsuit vulnerability.

Mistaken Qualified Beneficiaries. If an individual is not a qualified beneficiary, they do not have independent election rights, but they may still be covered by COBRA. For example, if a COBRA qualified beneficiary adds an eligible dependent at open enrollment, the plan must allow the qualified beneficiary to enroll the dependent, but the dependent does not have independent election rights. Therefore, the dependent can

only stay on the coverage for the remainder of the employee's COBRA coverage period. Similarly, if a COBRA qualified beneficiary gets married, the qualified beneficiary can enroll the new spouse but the spouse is not a qualified beneficiary. If an employee with domestic partner coverage has a qualifying event, the employee must be allowed to elect COBRA coverage that includes the domestic partner, but the domestic partner is not a qualified beneficiary and does not have independent election rights.

Triggering Event Does Not Cause Loss of Coverage. Triggering events become qualifying events only if they cause coverage loss. If there is a triggering event and no subsequent loss of coverage, there is not a qualifying event and COBRA continuation should not be offered.



Plan Documents Include COBRA Language for Years COBRA Does Not Apply.

Complications may arise for a small employer with a fluctuating workforce size. For example, a plan is subject to COBRA one year when the employer has 20 employees, but is not subject to COBRA the next year when the workforce drops to 10 employees. To avoid COBRA disputes pertaining to whether the small employer exemption applies for a particular year, employers that fluctuate above and below the small employer threshold should notify plan participants by amending their plan documents and distributing their SPDs to reflect their COBRA status. This way, COBRA coverage is not unintentionally extended to those who are considered qualified beneficiaries in one year but not the next.

Not Tracking Qualifying Event Dates Related to Leaves of Absence. Especially when multiple types of employee leave intersect with a termination date, tracking qualifying events can be confusing without sufficient administrative organization. Written separation and leave policies will help employers and COBRA administrators provide proper COBRA notices in a timely fashion and proper documentation will help employers create a clear timeline of when an employee's leave or termination occurred, as well as prove that COBRA obligations were sufficiently met.

Medicare Mishap. A common misconception is that when a covered current employee is entitled to Medicare, an employer-sponsored health plan may terminate the covered employee's health care coverage, which would make the covered employee entitled to COBRA due to a loss of coverage. However, most group health plans are prohibited

from making Medicare entitlement an event that causes a loss of coverage. Additionally, employers are forbidden from offering financial or other incentives for Medicare-eligible individuals to opt-out of group health coverage.

Enforcement

COBRA penalties for noncompliance can be costly. A \$110 per day penalty can be assessed for failure to provide COBRA notices or requested documents. Additionally, a self-reported IRS excise tax up to \$100 per day (\$200 per day when the failure impacts more than one qualified beneficiary) applies. Beyond the notice failure penalty and the excise tax penalty, employers can be sued for COBRA violations, and may be held liable for medical expenses that should have been covered by COBRA continuation coverage. Further, if a qualified beneficiary's lawsuit is successful, the employer may be liable for other damages and attorney fees. See [Federal Health & Welfare Compliance Monetary Penalties](#) for more information.

The intent of this analysis is to provide general information regarding the provisions of current federal laws and regulation. It does not necessarily fully address all your organization's specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization's general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.