

Targeted Compliance COBRA



Determining the Length of COBRA Continuation Coverage

Generally, COBRA continuation coverage must be offered for 18 months, 29 months, or 36 months, depending upon the type of qualifying event that occurred. The longest period for which COBRA coverage must be provided is called the maximum coverage period. Employers must understand how long to offer COBRA continuation coverage to ensure that coverage is offered for the appropriate period of time and to ensure that all the conditions of a qualifying event have been met when initially extending an offer of COBRA coverage. To help you determine the length of the maximum coverage period, consider the targeted action items below.

- **Determine the date of the triggering event and the date of the loss of coverage.** Once you've determined that a triggered event occurred and that the triggering event caused a loss of coverage, the next step is to determine the dates of both. Generally, the maximum coverage period is measured from the date of the triggering event. There is an exception — a plan may measure the maximum coverage period from the date that coverage is lost (which often occurs later than the triggering event), but only if the deadline for sending COBRA notices is also measured from the date that plan coverage is lost. For example, if an employee terminates employment on July 15, but coverage continues to the end of the month (e.g., July 31), then the date of the triggering event is July 15, but the date of loss of coverage is July 31.
- **Determine which of the standard coverage periods apply.** After determining which date to begin the maximum coverage period, the next step is to determine the applicable length. For termination of coverage due to an employee's termination of employment (for reasons other than gross misconduct) or due to an employee's reduction in hours, the maximum coverage period is 18 months. For termination of coverage due to the death of the employee, divorce or separation, entitlement to Medicare, or loss of dependent status for a child, the maximum coverage period is 36 months. For termination of retiree coverage due to bankruptcy, the maximum coverage period is for the length of the retiree's life. The retiree's spouse and dependent children are also entitled to coverage for the life of the retiree, and, if they live longer than the retiree, they are entitled to COBRA continuation coverage for 36 months after the retiree's death. However, if the retiree is not living when the qualifying event occurs, but the retiree's surviving spouse is covered by the group health plan, then that surviving spouse is entitled to coverage for his or her life.
- **Determine whether a special rule applies to the maximum coverage period.** Certain circumstances give rise to special rules applicable to determining the maximum coverage period. For example, if a child is born, adopted, or placed for adoption during a COBRA continuation coverage period, that child also becomes a qualified beneficiary. However, the child's maximum coverage period is based upon the qualifying event that triggered the COBRA coverage period. For example, if an employee terminates employment on March 1 and a child is born on April 1, the child is only entitled to COBRA continuation coverage for 18 months beginning on March 1, not 18 months beginning on April 1. In addition, a special limitation exists for COBRA continuation coverage associated with health flexible spending accounts (health FSAs) that meet certain conditions. For example, an employer is not required to offer COBRA continuation coverage to qualified beneficiaries who have "overspent" their accounts as of the date of the applicable qualifying event. In addition, if a qualified beneficiary has an underspent account, then an employer must offer COBRA continuation coverage, but the coverage may be terminated at the end of the year in which the qualifying event occurred (subject to any applicable grace period under the health FSA).
- **Determine whether COBRA coverage can be terminated before the expiration of the maximum coverage period.** In addition to rules potentially extending COBRA continuation coverage, other rules permit a plan to

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terminate COBRA continuation coverage before a maximum coverage period expires. More specifically, COBRA coverage can be terminated before the expiration of the maximum coverage period for the following reasons:

- The qualified beneficiary fails to make timely payment of COBRA premiums;
- The employer terminates any and all group health plans for any employees;
- The qualified beneficiary obtains coverage under another group health plan after an election of COBRA continuation coverage;
- The qualified beneficiary becomes entitled to Medicare after an election of COBRA continuation coverage;
- A disabled qualified beneficiary, whose disability previously extended the maximum coverage period to 29 months, is no longer considered to be disabled before the end of the extended period; or
- The plan terminates the qualified beneficiary's COBRA coverage occurs for cause (e.g., termination of coverage for submitting fraudulent claims).

- **Determine whether the maximum coverage period is subject to an extension rule.** In addition to certain rules that can terminate coverage before the expiration of the maximum coverage period, other rules can extend the maximum coverage period. The following five extending rules are:
 - The extended notice rule, which allows the maximum coverage period to run from the date of loss of coverage, rather than from the date of the triggering event (also called the delayed employer notice rule);
 - The disability extension rule, which extends the 18-month period to 29 months for all related qualified beneficiaries due a qualified beneficiary's disability;
 - The multiple qualifying event rule, which extends the maximum coverage period for spouses and children when a second qualifying event occurs during the initial 18-month period (or initial 29-month period, if a disability extension is in effect) to a total of 36 months from the date of the original qualifying even (e.g., during the first 18 months of COBRA continuation, the employee dies);
 - The pre-termination (or pre-reduction of hours) Medicare entitlement rule, which can extend the 18-month maximum coverage period for a spouse and children when COBRA eligibility arises due to a covered employee's termination of employment or reduction in hours if the employee became entitled to Medicare within 18 months before the triggering event occurred; the length of the maximum period for the spouse and children is measured from the date of Medicare entitlement and may be up to 36 months; and
 - The bankruptcy of sponsoring employer rule, which is restricted to retiree coverage and which can extend COBRA coverage for the life of the employee or the lives of the employee's spouse and dependent children.
- **Determine whether the maximum period has expired such that an offer of COBRA continuation coverage is not required.** In addition to rules that impact the length of the period during which a plan must offer COBRA continuation coverage, the length of the maximum coverage period also plays a role in determining whether a qualifying event has occurred. Under COBRA, a qualifying even occurs when all of the following conditions are met: (1) a triggering event occurred (2) that causes (or will cause) a loss of plan coverage (3) within the maximum coverage period (4) while the plan is subject to COBRA. If the maximum coverage period has expired, then the plan need not offer COBRA continuation coverage. For example, if an employee and spouse divorce on December 31, 2020, then the maximum coverage period would end on December 31, 2023 (i.e., 36 months after when coverage would have terminated due to the divorce). If neither the employee nor the spouse properly notifies the plan of the divorce until December 31, 2025 and coverage for the spouse continued until that time, then the employer would not be required to offer COBRA continuation coverage to the spouse based upon the divorce because the maximum coverage period would have already expired.

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The intent of this analysis is to provide you with general information. 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. Questions regarding specific issues should be addressed by your organization's general counsel or an attorney who specializes in this practice area.