

COBRA Is An Employer Law

It is the responsibility of the employer to understand all the requirements of the federal COBRA law and fully comply with its requirements. The information contained in this manual, your benefits booklet, and model notifications is only intended to be a summary of COBRA administration rights and obligations, not a complete description of the law. Additional information can be found by contacting the U.S. Department of Labor directly or by visiting their web site at www.dol.gov. Because of the importance of administering COBRA correctly—we **strongly encourage you to review COBRA and your company's COBRA administration requirements with your legal counsel.**

Overview—Continuation of Group Health Insurance (COBRA)

When group health insurance coverage ends, the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) requires **eligible** employers to offer individuals who are losing coverage (known as qualified beneficiaries) the opportunity to purchase continued group health care coverage, including medical, dental and vision coverage if applicable, on a self-pay basis for a limited period of time. A “qualified beneficiary” is:

- an employee, spouse or dependent child who had coverage under a Trust health care plan on the day before the qualifying event that causes a loss of coverage under the Trust health care plan
- a child who is born or placed for adoption with a covered employee or qualified beneficiary, if the child is enrolled in a Trust health plan as described in the **Enrollment** section of this manual

Group health insurance continuation coverage (COBRA) is the same medical, dental and vision coverage as that provided under the Trust plan to active employees with similar family situations. If the Trust plan or the cost of the plan changes for active employees, then the coverage or cost will also change for participants continuing the group health plan under COBRA provisions. Life insurance and AD&D coverage are not considered group health plans and may not be continued under COBRA, but may be converted to individual policies.

Determining if Your Company is Subject to COBRA

Your company must comply with COBRA requirements if it employed 20 or more employees on at least 50% of its typical business days in the previous calendar year. All full-time and part-time common law employees of an employer are taken into account in determining whether an employer had 20 or more employees; however, an individual who is not a common law employee of the employer is not taken into account such as self-employed individuals, independent contractors, and directors.

Each full-time employee counts as one employee and each part-time employee counts as a fraction, with the numerator of the fraction equal to the number of hours worked by that employee and the denominator equal to the number of hours that must be worked on a typical business day in order to be considered a full-time employee. The determination of the number of hours required to be considered a full-time employee is based upon the employer’s employment practices, except that in no event may the hours required to be considered a full-time employee exceed eight hours for any day or 40 hours for any week.

Example #1:

On January 1, 2004, the company looks back over the calendar year 2003. If your company employed 22 employees on at least 50% of its typical business days in 2003, it is subject to COBRA for **all** of calendar year 2004 even if you employ less than 20 employees in 2004.

COBRA also requires that the employee of related employers be aggregated for purposes of the 20-employee test. Example #2 illustrates this rule:

Example #2:

ABC Company participates in the BIAW Group Insurance Trust. The sole shareholder of ABC Company also owns 100% of the stock of the XYZ Company. XYZ Company does not participate in the BIAW Trust. In calendar year 2003, ABC Company employs 15 employees and XYZ Company employs 10 employees on at least 50% of their typical business days. For purposes of COBRA, the employees of ABC Company and the employees of XYZ Company are aggregated (total of 25 employees for calendar year 2003). Both the ABC Company and the XYZ Company are subject to COBRA for all of calendar year 2004.

In making the COBRA eligibility determination all employees are counted—whether or not they are covered under the Trust plans—including full-time, part-time, temporary, union employees, and in some cases employees of related companies.

It is the responsibility of the employer to determine if you are subject to the COBRA requirements and as you can see from the above information, this determination is not always an easy one to make. Since the consequences of failing to comply with COBRA requirements can be severe, you should discuss questions about your company's COBRA status with your legal counsel at the beginning of each calendar year. This is especially critical if you have tentatively concluded that your company is not subject to COBRA.

What if Your Company is Not COBRA Eligible?

If your company is not COBRA eligible you **cannot** offer COBRA continuation coverage.

If your company is not subject to COBRA, conversion plans are available for your employee from the insurance carriers. Please refer to the benefits booklet, *When You Are No Longer Eligible For Coverage*, section for information on these plans.

Overview of COBRA Qualifying Events

A COBRA qualifying event occurs when one of the events listed in the COBRA statute causes the covered employee, or the spouse or a dependent child of the covered employee, to lose coverage under the plan. For this purpose, to lose coverage means to cease to be covered under the same terms and conditions as in effect immediately before the qualifying event.

Qualifying Events For Covered Employee—If you are the covered employee, you will become a qualified beneficiary and have the right to elect this health plan continuation coverage if you lose your group health coverage because of a termination of your employment (for reasons other than gross misconduct on your part) or a reduction in your hours of employment.

Qualifying Events For Covered Spouse—If you are the *covered* spouse of an employee, you will become a qualified beneficiary and have the right to elect this health plan continuation coverage for yourself *if* you lose group health coverage because of any of the following reasons:

1. A termination of your spouse's employment (for reasons other than gross misconduct) or reduction in your spouse's hours of employment;
2. The death of your spouse;
3. Final divorce from your spouse.

Qualifying Events For Covered Dependent Children—If you are the *covered* dependent child of an employee, you will become a qualified beneficiary and have the right to elect continuation coverage for yourself *if* you lose group health coverage because of any of the following reasons:

1. A termination of the parent-employee's employment (for reasons other than gross misconduct) or reduction in the parent-employee's hours of employment;
2. The death of the parent-employee;
3. Parent's final divorce or;
4. You cease to eligible for coverage as a "dependent child" under the terms of the health plan.

The length of continuation coverage is determined by the actual event. If the event is a termination of employment or a reduction of hours on the part of the employee, then qualified beneficiaries are eligible to continue coverage in general for a maximum period of 18 months. If the event is the death of the employee, final divorce, or a dependent child ceasing to be eligible as a dependent under the terms of the plan, then qualified beneficiaries are eligible to continue coverage in general for a maximum time period of 36 months.

Qualifying Events—Employer Responsibilities

It is the responsibility of the employer to know when the following qualifying events occur. These qualifying events include, termination of employment, reduction of hours and death of the employee.

Qualifying Events—Employee/Qualified Beneficiary Responsibilities

It is the responsibility of the covered employee, spouse, dependent, or representative of the qualified beneficiary to notify the Employer Plan Administrator of a final divorce or a dependent child ceasing to be a dependent child under the terms of the group health plan. Notification of these events **must be made within 60 days of the date of the event or from the date of loss of coverage**. Notification must be made in accordance with the reasonable notification procedures that have been established by the plan administrator. These notification procedures must be described in detail in the initial “general” notification that is provided by the employer upon commencement of coverage under the plan. A failure to notify the plan within the required timelines will cause continuation coverage rights to be forfeited.

Employer COBRA Notification Requirements

If your company is COBRA eligible, you have the responsibility of providing **three** required COBRA notifications to plan participants. The first being provided when coverage under the plan commences, the second when a COBRA qualifying event actually occurs, and third if a determination is made that continuation coverage is not available. If you would like these notices in Word format, please contact EPK & Associates, Inc.

1. Initial “General” COBRA Notification

You are required to provide each *covered* employee and *covered* spouse with written notification of their rights and obligations under COBRA when they first become covered under the Trust health care plans or within 90 days of the start of that coverage. For more information on when coverage under the plan commences, see ***When Coverage Starts*** in this manual.

Single Notice Rule: You may satisfy the requirement to provide notice to a covered employee and the covered employee’s spouse by furnishing a single notice addressed to both the covered employee and the covered employee’s spouse, if, on the basis of the most recent information available to you, the spouse resides at the same location as the covered employee. **If a covered spouse lives at a different address or if the spouse’s coverage under the plan commences after the date on which the covered employee’s coverage commences, then a separate notice would have to be provided to the covered spouse at that time.** For example, if a single employee marries and adds the new spouse to the group health plan according to health care plan rules, then an initial general notice must be sent to the covered spouse at that time.

Model Notice. Contained in this section is a model notice that is intended to assist you in discharging the notice obligations of this section. The model reflects US Department of Labor notification requirements. In order to use the model notice, you must appropriately add relevant information where indicated in the model notice, select among alternative language, and supplement the model notice to reflect applicable plan provisions. Items of information that are not applicable to a particular plan may be deleted.

Reasonable Employee/Qualified Beneficiary Notification Procedures. As stated above, it is the responsibility of the qualified beneficiary to notify the plan administrator of a final divorce or if a covered dependent child is ceasing to be eligible for coverage under the plan due to age, marital status, or no longer being financially dependent on the employee. **Failure to provide notice within the required time frame of 60 days will result in loss of eligibility for group health insurance continuation coverage.** However, it is your responsibility in the Initial “General” COBRA Notification to establish reasonable procedures for the qualified beneficiary to follow when making this notification. At a minimum, your reasonable procedures should specify the individual or entity designated to receive such notices; specify the means by which notice may be given; and describe the information concerning the qualifying event that you deem necessary in order to provide continuation coverage.

2. COBRA “Election” Notification—“Notice of Right to Continue Group Health Insurance Coverage”

You are required to provide each *covered* employee, *covered* spouse, and *covered* dependent with written notification of their rights to elect to continue and pay for their group health insurance continuation coverage when a qualifying event occurs.

Timing: A COBRA election notice shall be provided to *each* qualified beneficiary not later than 44 days after the date of the qualifying event, or, if the loss of coverage date is being used as the qualifying event date, then not later than 44 days from the loss of coverage date.

Special notice rule: The notice shall be furnished to each qualified beneficiary or individual, except that an administrator may provide notice to a covered employee, the covered employee's spouse, and each qualified beneficiary who is the dependent child of a covered employee by furnishing a single notice addressed to both the covered employee and the covered employee's spouse, if, on the basis of the most recent information available to you, the covered employee's spouse and dependent child(ren) reside at the same location as the covered employee.

The notice shall be written in a manner calculated to be understood by the average plan participant and should clearly identify each qualified beneficiary who is recognized by the plan as being entitled to elect continuation coverage with respect to the qualifying event.

Model notice. Contained in this section is a model notice that is intended to assist you in discharging the notice obligations of this section. Use of the model notice is not mandatory. The model reflects US Department of Labor notification requirements. In order to use the model notice, you must appropriately add relevant information where indicated in the model notice, select among alternative language, and supplement the model notice to reflect applicable plan provisions. Items of information that are not applicable to a particular plan may be deleted.

3. Notice of Unavailability of Continuation Coverage

In the event you are not notified of a final divorce or a dependent child ceasing to be a dependent child under the terms of the group health plan within the 60 days as required by plan and COBRA rule, a determination can be made that the individual is not entitled to continuation coverage because of their failure to follow the reasonable notification procedures. If continuation coverage is not going to be offered, you shall provide to the individual an explanation as to why the individual is not entitled to elect continuation coverage. Notice shall be furnished in the same time period that would apply if you had determined the individual was entitled to elect continuation coverage.

Employer COBRA Qualifying Event Notification Procedures

Once you have determined a qualifying event has occurred, the following steps must be taken.

1. Termination of Health Insurance—Retroactive Reinstatement

You are *required* to cancel coverage of a qualified beneficiary from active group coverage by providing to EPK & Associates a completed *Change Transmittal* form. If a qualified beneficiary has a claim that occurs after the loss of coverage date, it will not be considered an eligible expense and will be denied payment. However, if the qualified beneficiary elects **and pays** for continuation coverage in the appropriate time periods, then their group health insurance under the Trust will be reactivated by EPK & Associates back to the loss of coverage date. Any valid claims will be released for payment as long as the former employer has also paid their group's current amount due.

2. COBRA Election Notice Procedures

As described in the ***Employer COBRA Notification Requirements*** section, you are required to provide each qualified beneficiary within 44 days of a qualifying event:

- *COBRA Election Notice—Notice of Right To Continue Group Health Insurance Coverage (Model COBRA Continuation Coverage Election Notice)*
- *Continuation Coverage (COBRA) Election form*

A model *Notice of Right To Continue Group Health Insurance Coverage* and *Continuation Coverage Election* form are included in this section. If a qualified beneficiary wishes to elect to continue their group health insurance, the *Continuation Coverage Election* form is sent directly by the qualified beneficiary to EPK & Associates for processing.

Mail the notice and election form to the qualified beneficiary's last known address via first class mail, certified mail or certificate of mailing. If a qualified beneficiary lives at a different address than the covered employee, for example; because of a divorce or a dependent ceasing to be a dependent, then the notice is to be sent to that address.

Failure to send the notice within the 44-day COBRA notification period can have severe consequences for your firm. Additionally, failure by an employer to timely provide a COBRA notice does not terminate a qualified beneficiary's right to continuation of group health coverage. However, such a failure will eliminate any obligation on the part of the Trust and/or its insurance carriers to provide this continuation coverage under the plan. This effectively means that the firm will self-fund any claims the qualified beneficiary incurs.

3. Employer Administration Fundamentals

To insure that the employer properly administers their responsibilities under COBRA and to prevent against errors, it is recommended by federal regulators that the employer take the following administration steps.

- Establish Written COBRA Standard Operating Procedures (SOPS)
- Document all notifications (who, what, where, why, and how)
- Train all personnel involved in administration of COBRA
- Establish an audit system to insure all notices were sent in a timely manner
- Periodically review all COBRA notifications to insure they are updated in a timely manner

COBRA Election Period

A qualified beneficiary must elect continuation of group health insurance coverage by returning a completed and **signed** *Continuation Coverage Election* form to EPK & Associates within 60 days after the later of:

- the date he or she is sent the *Notice of Right to Continue Group Health Insurance Coverage* (as long as that notice is sent within the required timeframe), or
- the date coverage under the Trust health plan ends

Elections are deemed made on the date the Election Form is sent to EPK & Associates. If a qualified beneficiary fails to elect continuation coverage during the 60-day election period, he or she will no longer be eligible to continue their group health insurance coverage. **No late COBRA elections will be accepted.**

Example: An unmarried employee without children who is receiving coverage under a Trust health plan voluntarily terminates employment on January 1, 2004. The *Notice of Right To Continue Group Health Insurance Coverage* is sent by you on January 15, 2004, but coverage under the Trust does not end until January 31, 2004. In this example, the qualified beneficiary would have 60 days to elect continuation coverage from January 31, 2004 since this is the later of the two dates. However, if you did not send the *Notice of Right To Continue Group Health Insurance Coverage* until February 5, 2004, then the qualified beneficiary would have 60 days from February 5, 2004 since February 5th is now the later of the two dates.

Duration of Continued Group Health Insurance

How Long will Continuation Last?

In the case of loss of coverage due to end of employment or reduction in hours of employment, coverage may be continued for up to 18 months. In the case of losses of coverage due to an employee's death, final divorce, or a dependent child ceasing to be a dependent under the terms of the Plan, coverage may be continued for up to 36 months. Page one of this notice shows the maximum period of continuation coverage available to the listed qualified beneficiaries.

Continuation coverage will be terminated before the end of the maximum period if any required premium is not paid on time, if a qualified beneficiary becomes covered under another group health plan that does not impose any pre-existing condition exclusion for a pre-existing condition of the qualified beneficiary, if a covered employee enrolls in Medicare, or if the employer ceases to provide any group health plan for its employees. Continuation coverage may also be terminated for any reason the Plan would terminate coverage of a participant or beneficiary not receiving continuation coverage (such as fraud).

Group Health Insurance “COBRA” Payments

Qualified beneficiaries who elect to continue their group health insurance must pay the full cost of the group health insurance coverage, plus a 2% administration fee. All payments are made by the qualified beneficiary directly to EPK & Associates.

For current continuation coverage rates, contact EPK & Associates at (425) 641-7762 or (800) 545-7011 ext 5 (toll-free)

Once a qualified beneficiary elects continuation coverage by sending the election form to EPK & Associates, they must pay their initial continuation coverage payment within 45 days of the date they elected continuation coverage. This payment is to cover the initial rate months - the period from the date coverage under the Trust plans ends through the 45th day after coverage is elected. If payment is not made within this 45-day period, then rights to continuation coverage are lost and any claims occurring after the loss of coverage date will remain unpaid.

After this initial payment, monthly payments are due on the first of each month for that month's coverage. Checks for payments should be made out to the “**BIAW/BIAW Trust**” and sent to:

BIAW Health Insurance Trust
c/o EPK & Associates, Inc.
15375 SE 30th Pl, #380
Bellevue, WA 98007

The qualified beneficiary has a 30-day grace period following the monthly due date in which to make full payments. Delinquent notices are not provided to the qualified beneficiary. If payments are not postmarked within the grace period, coverage will be canceled retroactively to the last day of the month for which full monthly payment was made.

Note: Once canceled, continuation coverage cannot be reinstated.

EPK & Associates' Responsibilities

EPK & Associates takes the responsibility for the following continuation coverage related duties for your firm:

- Once the qualified beneficiary elects to continue, process the Continuation Coverage Election form
- Denying late COBRA elections and communicating with qualified beneficiary
- Providing monthly billing statements to continuation coverage participants (not required by law)
- Processing and collecting COBRA payments
- Forwarding eligibility and enrollment information to the applicable insurance companies
- Reinstating group health insurance coverage
- Answering all qualified beneficiary written and telephone inquiries
- Terminating continuation coverage when applicable
- Notifying qualified beneficiaries of termination of coverage
- Notification of premium changes
- Notification of plan changes
- Processing open enrollment changes
- Notifying qualified beneficiaries of conversion rights upon expiration of coverage
- Processing second qualifying events
- Administering continuation coverage disability extensions
- Notification of early COBRA termination

When COBRA Coverage Ends

Please refer to the benefits booklet for information on cancellation of COBRA coverage.

Please see the *When You Are No Longer Eligible For Coverage* section in the benefits booklet for information on conversion plans available when your COBRA continuation ends.