



COMPLIANCE CONNECTION

COBRA Release 1

COBRA Q & A

What is the Consolidated Omnibus Budget Reconciliation Act (COBRA)?

COBRA is a federal law that requires group health plans sponsored by employers with at least 20 employees on more than 50% of their typical business days to offer employees and their family members the option to continue benefits for limited periods of time when coverage under the plan would otherwise end due to certain qualifying events.

It's important to remember that both full-time and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of a full-time employee, equal to the number of hours the part-time employee worked divided by the hours an employee must work to be considered full-time.

The law sets rules for how and when continuation coverage must be offered, how employees and their families may elect COBRA, and what circumstances justify terminating coverage. It also requires employers and plans to provide specific notices in connection with administering COBRA.

Who is responsible for COBRA Compliance?

Complying with COBRA is the direct responsibility of the plan administrator.

What are the possible penalties for Non-Compliance?

With so many requirements under COBRA, it's easy to make a mistake—but a violation can be costly. If a plan does not comply with COBRA, the employer maintaining the plan may be liable for a tax penalty of \$100 per employee or family member (up to \$200 per family) for each day of noncompliance, subject to a statutory limit of up to \$500,000 for unintentional violations that are due to reasonable cause and not willful neglect.



Who is a Qualified Beneficiary?

- An individual covered by a group health plan on the day before a qualifying event, who is either:
 - An employee;
 - The employee's spouse (including legally married same-sex spouses);
 - The employee's dependent child; or
 - The employee's former spouse
- Any child born to or placed for adoption with a covered employee during the period of COBRA coverage

In certain cases, a retired employee (and such employee's spouse and dependent children), as well as an employer's agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries.

What is a Qualifying Event?

An event is a qualifying event only if it would cause the qualified beneficiary to lose coverage under the plan. The type of qualifying event determines who the qualified beneficiaries are and the amount of time the plan must offer health coverage to them under COBRA.



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Qualifying Events:

- **For employee/spouse/dependent child:**
 - Termination of covered employee's employment (other than for gross misconduct)
 - Reduction in hours worked by the covered employee
- **For spouse/dependent child only:**
 - Covered employee becoming entitled to Medicare
 - Divorce or legal separation of the covered employee
 - Death of the covered employee
- **For dependent child only:**
 - Loss of dependent child status under the plan rules



What is the Duration of COBRA Coverage?

Once a qualifying event has taken place, it is important to understand the duration of the continuation coverage. The duration is based on the qualifying event, as well as the qualified beneficiaries entitled to be covered by COBRA. The following chart provides a quick summary of how long coverage may continue under COBRA.

Qualified Beneficiary	Qualifying Event	Maximum Period of Continuation Coverage
Employee Spouse Dependent child	Termination (except for gross misconduct) Reduced hours 18 months*	18 months*
Spouse Dependent child	Employee entitled to Medicare Divorce or legal separation Death of covered employee	36 months
Dependent child	Loss of dependent child status	36 months
* Individuals who are entitled only to an 18-month maximum period of COBRA can become entitled to an extension of continuation coverage when a second qualifying event occurs or when a qualified beneficiary is determined by the Social Security Administration to be disabled.		

Second Qualifying Event - Up to 36 Months of COBRA

An 18-month extension may be available to qualified beneficiaries (for a total maximum period of 36 months of continuation coverage) if a second qualifying event occurs. The second event can be a second qualifying event only if it would have caused the qualified beneficiary to lose coverage under the plan in the absence of the first qualifying event. Second qualifying events include:

- Death of the covered employee;
- Divorce or legal separation of the covered employee and spouse;
- Medicare entitlement (under part A, part B, or both); and
- Loss of dependent child status under the plan.



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Disability Coverage - Up to 29 Months of COBRA

If one of the qualified beneficiaries in a family becomes disabled either before becoming eligible for COBRA continuation coverage or within the first 60 days of being covered by COBRA continuation coverage, all of the qualified beneficiaries in that family may be entitled to an 11- month extension (for a total maximum period of 29 months of continuation coverage). **To qualify for a disability extension:**

- The disabled qualified beneficiary must be determined by the Social Security Administration (SSA) to be disabled at some time during the first 60 days of COBRA continuation coverage; and
- The disability must continue during the rest of the initial 18-month period of COBRA coverage.



What are Some Key COBRA Notifications?

Group health plans are required to provide qualified beneficiaries (generally employees, current or former spouses—including legally married same-sex spouses, and dependent children) with specific notices explaining their COBRA rights. **Some of the key notice requirements under COBRA include:**

- **COBRA General Notice:** A group health plan must provide a general notice describing COBRA rights to an employee and his or her spouse who become covered under the plan, within the first 90 days of coverage. This requirement may be satisfied by including the notice in the summary plan description (SPD) and giving the SPD to the employee and to the spouse within the 90-day time limit.
- **COBRA Election Notice:** Within 14 days after receiving notice of a qualifying event, the plan administrator must provide qualified beneficiaries with an election notice, in person or by first class mail, which describes their rights to COBRA and how to make an election,

Other notices, such as the **Notice of Unavailability of Continuation Coverage** and the **Notice of Early Termination of COBRA Coverage**, should be sent to qualified beneficiaries as necessary. It is also pertinent to have procedures in place for keeping track of when and to whom notices are sent to provide evidence of compliance, if necessary.



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COBRA Compliance Checklist

If you answer **NO** to any of the following questions
your company may be at risk.

WE ARE HERE TO HELP!

DOES YOUR COMPANY:

- 👍 Provide written notifications, which have been reviewed by legal council to communicate **COBRA** rights to your plan participants?
- 👍 Grant mandated extensions of **COBRA** coverage to the appropriate beneficiaries within the legal time limits?
- 👍 Keep these notifications up-to-date with current regulations? Know when changes in the law occur that affect your **COBRA** notifications?
- 👍 Know under which circumstances termination of **COBRA** is lawfully permitted?
- 👍 Send **COBRA** notifications to each employee and covered dependent upon initial enrollment in your plan?
- 👍 Send participants' termination notices?
- 👍 Know which individuals may be entitled to **COBRA** continuation coverage and what events trigger their right to **COBRA** continuation coverage?
- 👍 Know how to handle denials of **COBRA** coverage and early terminations?
- 👍 Send a qualifying event notification to the last known home address of a qualified beneficiary whenever a **COBRA** qualifying event occurs?
- 👍 Notify qualified beneficiaries of conversion options during required time frame?
- 👍 Document all **COBRA** - related events and keep copies of all notices sent, with proof-of-mailing, in case of an audit?

To reduce the risk of non-compliance and avoid costly penalties it is imperative to have an effective solution in place to administer your **COBRA** obligations. We are here to help ease the burden of this time consuming, complicated requirement and find the best method for each unique need.

*Information in this document is general in nature and not intended to replace legal advice in any particular manner.

Contact Us With Any Questions

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