



## Corporate Exposure: Bitten by COBRA

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Although Congress remains in a heated debate over the President's demands for universal health insurance for all Americans, corporations should not forget their responsibilities as detailed within the COBRA federal laws. COBRA applies to private sector health plans, as well as those sponsored by state and local governments. The federal government and most religious organizations are exempt.

Failure to comply with COBRA can result in substantial damages, awards, and penalties. Simply stated, COBRA mandates that all former employees (including retirees), their spouses, and any dependent children, have the right and opportunity to buy temporary continuation of health insurance coverage at the employer's group rates. Generally speaking, COBRA benefits apply to group health plans covering more than 20 employees, although some states require compliance for all groups regardless of number. You should check with your individual state representative.

### Understanding Coverage

We reviewed some recent decisions and concluded that most employers did not understand what constitutes a "qualified beneficiary" and, consequently, who must be given the right to continue coverage. Usually, those mentioned above are covered, along with anyone else who was protected by the plan on the day before employment terminated. This means that part-time workers, agents, independent contractors, and any others who were allowed coverage could be eligible to continue their benefits under COBRA requirements. Not surprisingly, questions arise. For example, suppose a covered individual quits on the spur of the moment or never comes back. Must the

employer seek out such individuals to offer them the opportunity to continue coverage per COBRA guidelines? The answer is a definite maybe. The specifics of an individual's termination will provide the answers. The details surrounding the individual's termination will dictate who is eligible and the length of time COBRA benefits must be offered. For example, if an employee is terminated for flagrant or gross misconduct, COBRA continuation of benefits does not apply. If an employee's hours are reduced, however, in essence changing status from full-time to part-time (thus eliminating benefits coverage), he or she must be given the opportunity to continue coverage under COBRA. Coverage for dependent children and spouses must be offered in the event of divorce or legal separation—or if the employee dies. Once the opportunity to continue coverage has been issued to covered individuals, they may elect to continue coverage as previously provided, or amend certain portions if the employer's plan or program permits. For example, certain COBRA participants may no longer desire dental coverage, life insurance, or whatever items may be elected from a menu of benefits. Your organization and health coverage provider must decide in advance the specific benefits to be provided to qualified recipients. How individuals elect coverage, notifications, enrollment protocol, and coverage options must be detailed for review or approval. You must be careful not to discriminate against anyone by failing to offer COBRA extensions to all who are qualified.

Although not required by COBRA regulations, we suggest employers notify employees of their rights by registered mail, with return receipt requested. Usually employers (or the plan administrator) must notify eligible COBRA participants within 14 days; typically, eligible individuals must accept

the offer to continue coverage within 60 days. In general, benefits are offered for ten months, although circumstances may cause this to be extended to 36 months (and possibly longer for the disabled). The individual must make the premium payments to the employer or coverage administrator on a monthly basis. Stipulations regarding dates and time frames for payments should be detailed for the individual's acceptance. The individual's premiums cannot exceed 102 percent of the cost for similar coverage while the individual was covered under the plan. The premium cost may be increased over time and/or under certain conditions. Some states require those who lose coverage and/or their dependents to be allowed to convert the health plan to an individual policy.

### State Laws Vary

As you will undoubtedly note in reading this article, the circumstances in your home state will significantly affect your requirements. Just because you purchased health insurance coverage from an insurance carrier, you still have to meet certain obligations. Those eligible for coverage under COBRA must be notified in a timely manner; thus, you may be required by your plan administrator to notify them within a specific time frame.

In summary, be certain those responsible for compliance are knowledgeable about the act and are receiving the necessary support to satisfy this mandate. The fines, penalties, and awards can be severe to the organization's financial health.

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