

### C.O.B.R.A. Health Plan Continuation Coverage 2011

One consequence of America's reliance on an employer-based health insurance system is that employees lose health insurance when they get fired, change jobs or get divorced. In 1986, the U.S. Congress passed the Consolidated Omnibus Budget Reconciliation Act (C.O.B.R.A.) to provide newly unemployed workers with temporary health insurance coverage. Under C.O.B.R.A., private sector employers of more than 20 employees and all state and local governments that offer health insurance must provide temporary continuation coverage to covered employees, their spouses, their former spouses, and their dependent children when coverage would otherwise be lost to a 'qualifying event'. A general notice to employees and spouses if covered by the employer's plan regarding their C.O.B.R.A. rights must be provided to them within 90 days of plan coverage.

For employees, qualifying events include the voluntary or involuntary termination of employment for reasons other than gross misconduct; and a reduction in the number of hours of employment. Employees who lose benefits as a result of going on strike may be eligible for continuation coverage under the 'reduced hours' qualifying event.<sup>1</sup> For employees, the longest period of continuation coverage allowed by law is 18 months.<sup>2</sup> For spouses, qualifying events include the voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct; a reduction in the hours worked by the covered employee; the covered employee becoming eligible for Medicare; and a divorce or legal separation from the covered employee. Involuntary termination for "gross misconduct" would disqualify an individual for COBRA coverage and premium assistance under the American Recovery and Reinvestment Act of 2009.<sup>3</sup> Dependent children have the same first 3 qualifying events as spouses and the loss of dependent child status under the plan rules. For spouses and dependent children, the longest period of continuation coverage allowed by law is 36 months.

Generally speaking, the coverage that must be provided to qualified beneficiaries under the law must be the same that was offered before the qualifying event. The continuation coverage provided under C.O.B.R.A. can stop earlier than the maximum allowed under law if the premiums are not paid in full on a timely basis; if the employer stops providing health insurance coverage; if a qualified beneficiary begins coverage under another group plan or becomes eligible for Medicare, or if a qualified beneficiary engages in conduct that would

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<sup>1</sup> 26 CFR § 54.4980B-4; see also Fort Frye School District, 91 LA 1140 (Arb. 1988).

<sup>2</sup> In certain circumstances, qualified beneficiaries entitled to 18 months of continuation coverage may become entitled to a disability extension of an additional 11 months (for a total maximum of 29 months) or an extension of an additional 18 months due to the occurrence of a second qualifying event (for a total maximum of 36 months).

<sup>3</sup> See IRS Notice 2009-27.

justify the plan in terminating coverage of a similarly situated participant or beneficiary not receiving continuation coverage (e.g., fraud).

Individuals who elect C.O.B.R.A. continuation coverage may have to pay up to 102 percent of the employer's health insurance premium (in the case of fully-insured plan) or funding level (in the case of a self-insured plan). However, under the American Recovery and Reinvestment Act of 2009 (ARRA), eligible individuals can pay only 35 percent of their C.O.B.R.A. premiums, while the remaining 65 percent is reimbursed to the employer through a tax credit. This benefit was extended by subsequent legislation which extended the period to qualify for the C.O.B.R.A. premium reduction until May 31, 2010 and the maximum period for receiving the subsidy is 15 months (so that 15 of the 18 months one is under C.O.B.R.A. you receive the subsidy).

Individuals who are eligible for C.O.B.R.A. coverage because of their own or a family member's involuntary termination from employment that occurred during the period from September 1, 2008 through May 31, 2010 and who elect C.O.B.R.A. may be eligible to pay a reduced premium under this program. This premium reduction is generally available for continuation coverage under the Federal COBRA provisions, as well as for group health insurance coverage under comparable state continuation coverage laws. Legislation to extend C.O.B.R.A. benefits was expected by the summer of 2010, but the Unemployment Compensation Extension Act of 2010 signed by the President on July 22, 2010 did not extend the COBRA premium reduction. Instead, individuals who qualified on or before May 31, 2010 may continue to pay reduced premiums for up to 15 months, as long as they are not eligible for another group health plan or Medicare. If COBRA continuation coverage lasts for more than 15 months, individuals will need to pay the full amount to continue C.O.B.R.A. continuation coverage (for more information, see <http://www.dol.gov/ebsa/newsroom/fsExpiringSubsidy.html>).

C.O.B.R.A. notice requirements are triggered for employers and employees when a qualifying event occurs. If the qualifying event is a termination or reduction in hours of employment of the covered employee; the death of the covered employee; the covered employee becoming eligible for Medicare; or the bankruptcy of the employer, the employer must provide notice to the plan within 30 days after the event occurs; the 30-day period must begin with the date of loss of coverage rather than the date of the qualifying event. If the qualifying event is a divorce or legal separation; or a child's loss of dependent status under the plan, the individual must provide notice to the employer. While each employer may provide for this notice in its own way, the plan must allow at least 60 days after the date on which the qualifying event occurs for the employee or qualified beneficiary to give such notice.

Once notice has been received, the health insurance plan must provide an election notice to qualified beneficiaries within 14 days. Generally, employees and qualified beneficiaries have 60 days to provide such notice, beginning from the latest of the date of the qualifying event, the date of loss of coverage, or the date which the qualified beneficiary is informed of his or her obligation to provide such notice. C.O.B.R.A. coverage is retroactive if elected and paid for by the qualified beneficiary. The initial premium payment must be made within 45 days after the date of the C.O.B.R.A. election by the qualified beneficiary. Payment generally must cover the period of coverage from the date of C.O.B.R.A. election retroactive to the date of the loss of coverage due to the qualifying event. If premiums are not paid by the first day of the period of

the period of coverage, the plan has the option to cancel coverage until payment is received and then reinstate the coverage retroactively to the beginning of the period of coverage.

If the qualifying event concerns a strike, employees should be encouraged to obtain needed health insurance services, care and supplies before any job action is initiated. Any health insurance claim made before the date that the employer stops paying the premium should be paid for by the plan. The health insuring corporation (if the health plan is fully-insured) or third party administrator (in self-insured plans) may withhold provider payment until the employee pays the employer and employee's share of the premium upon C.O.B.R.A. election. If the employee does not choose to elect C.O.B.R.A. coverage, any medical claim initiated after the date the employer stopped paying the health insurance premium will become the responsibility of the employee.

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