

Calculating the First Premium Payment Amount and Due Date

Are you certain your calculations are accurate and in compliance?

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Scheduling the first COBRA premium payment and due date—and making sense of the results—can be a daunting task. The law and regulations are confusing at best, and misunderstandings about the rules governing the process are commonplace. This COBRA Tip discusses the critical issues that must be understood when tackling this thorny administrative challenge:

- Is the 45-day first payment period really a grace period?
- Is it necessary to account for weekends and holidays when determining due dates?
- What is the best method for determining how many monthly premiums are due with the first payment?
- What are the premium payment scheduling pitfalls and how can they be resolved?

Is the 45-Day Payment Period Really a Grace Period?

The 45-day first premium payment period is often referred to as the *initial payment grace period*. If this payment window is a true grace period, then it follows that the monthly premiums included in the first payment amount come due on earlier dates, and that the qualified beneficiary is late, but forgiven, when payment is made after the due date but before the grace period expires. However, such reasoning (and the message it sends to the qualified beneficiary) is not supported by the regulations, which expressly state that the qualified beneficiary cannot be required to make payment prior to the end of the 45-day period for any period of COBRA continuation coverage. If the first payment cannot be made due until the last day of the 45-day period, is the payment window really a grace period? No; it is simply the first payment due date, for which there is no grace period.

The U. S. Department of Labor (DOL) model election notice, which is included in the final rules published on May 26, 2004, lends support to the “no initial grace period” argument and reflects the department’s mandate that COBRA notices “shall be written in a manner calculated to be understood by the average plan participant”. In that notice, the DOL does not use the term *initial payment*, nor does the department identify the 45-day payment window as a grace period:

If you elect continuation coverage, you do not have to send any payment with the Election Form. However, you must make your first payment for continuation coverage not later than 45 days after the date of your

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election. (This is the date the Election Notice is post-marked, if mailed.) If you do not make your first payment for continuation coverage in full not later than 45 days after the date of your election, you will lose all continuation coverage rights under the Plan.

In keeping with this plain-language approach and to eliminate confusion regarding due dates and grace periods, we recommend using the terms *First Payment*, *First Payment Period* and *First Payment Due Date* when communicating with qualified beneficiaries.

Is it necessary to account for weekends and holidays when determining due dates?

Technically, no, though it is wise to do so when calculating the dates that trigger termination of continuation coverage due to non-payment—the first payment due date and the monthly grace period end date.

Imagine that the first payment is due on Sunday, September 5, 2004 (45 days after the July 22 election date). Remembering that a mailed payment is considered received on the postmark date, it is difficult to imagine how the qualified beneficiary can make timely payment if the envelope is not postmarked by Saturday, September 4. To further complicate matters, Monday, September 6 is a national holiday, which means that a payment mailed on Sunday will not be postmarked until Tuesday, September 7. Thus, to make the first payment due no later than September 5 effectively shortens the 45-day payment period to 43 days. Yes, it is a fine point, but it is often the fine points that cause problems for employers. Although the regulations do not clearly mandate the adjustment of dates falling on weekends or holidays, doing so will prevent your company from being at the center of an ugly test case. The safest approach is to shift first payment and grace period dates that fall on weekends forward to the first non-holiday weekday.

What about adjustments to monthly premium due dates? The need to account for weekends and holidays when setting monthly premium due dates is less clear, because there is no penalty for making payment after the due date, given it is received on or before the last day of the grace period. If a monthly premium due date falls on a Sunday, the qualified beneficiary still has a minimum of 30 additional days to make payment without penalty. Thus, there is no compelling need to adjust monthly due dates.

How many monthly premiums are due with the first payment?

The remainder of this article deals with the question of how to calculate the first payment amount and the problems you are likely to encounter. The following table lists the key values used in the example case:

Qualifying Event:	Voluntary Termination
Qualifying Event Date:	May 28, 2004
COBRA Start Date:	June 1, 2004
COBRA Election Date:	July 22, 2004
Calculated First Payment Due Date:	September 5, 2004
Adjusted First Payment Due Date:	September 7, 2004
Monthly Premium:	\$200

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Administration Fee:	2%
Monthly Grace Period:	30 days

Two First Payment Calculation Methods

Two methods are commonly used to calculate the number of months to include in the first payment: *The First Payment Month Method*, which is flawed, and *The Previous Payment Month Method*, which is more in keeping with the regulations.

Method I: The First Payment Month Calculation

This method specifies that the first payment must include all premiums that would normally be due from the COBRA start date thru the month in which the first payment is due.

How many premiums are included in the first payment when using this method?

Four. Because COBRA coverage begins on June 1 and the first payment is due on September 7, the payment must include the monthly premiums for June through September. Using this method, the first four entries in our example premium payment schedule would look like this:

Payment #	Due Date	Grace Period Ends	Amount Due	Months Included
1	9/7/2004	No Grace Period	\$816.00	4
2	10/1/2004	10/31/2004	\$204.00	1
3	11/1/2004	12/1/2004	\$204.00	1
4	12/1/2004	12/31/2004	\$204.00	1

What's wrong with this picture? At first glance, this payment schedule looks just fine. But there's a problem hidden in the numbers: by including the September premium in the first payment, which must be paid by September 7, we are effectively shortening the September grace period to 7 days. This is arguably a denial of the qualified beneficiary's right to a minimum 30-day grace period, which is a very risky proposition, indeed. The courts would most certainly frown upon the shortened grace period and the consequent increase in the financial burden placed upon the qualified beneficiary.

Method II: The Previous Payment Month Calculation

The Previous Payment Month calculation includes all premiums that would normally be due from the COBRA start date thru the month *previous* to the month in which the first payment is due.

How many premiums are included in the first payment when using this method?

Three. The first payment covers the monthly premiums for June through August. The first payment due date is September 7, while the September premium must be paid no later than October 1. Using this method to calculate the first payment amount, the first four entries in our premium payment schedule will look like this:

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Payment #	DueDate	GracePeriodEndDate	PremiumAmount	Months Included
1	9/7/2004	No Grace Period	\$612.00	3
2	9/1/2004	10/1/2004	\$204.00	1
3	10/1/2004	10/31/2004	\$204.00	1
4	11/1/2004	12/1/2004	\$204.00	1

The results of this calculation are in keeping with both the letter of the regulations and the spirit of the law—no grace period has been compromised and the initial burden on the qualified beneficiary is minimized.

What are the payment scheduling pitfalls?

Depending on when the election date falls and the length of the monthly grace period, scheduling oddities can occur that are difficult to explain to the qualified beneficiary. For example, assume the COBRA start date is July 1, the election date is August 16 and the grace period is 30 days. The previous payment month method tells us that the first payment must cover the July and August premiums and will be due on September 30. No problem there. However, because the September payment grace period ends on October 1, three monthly premiums will be due during a two day period (two included in the first payment plus the subsequent monthly payment). If you have ever attempted to explain this situation to a qualified beneficiary who is already suffering from “premium shock”, then you understand the depth of the problem.

How can this happen? The problem is not in the method of calculation; it is in the law. How close the first two payments are depends on the date of the election and the length of the monthly grace period. The closer the election is to the middle of the month, the closer the first payment due date is to the end of the following month. How much time separates the first payment due date from the last day of the subsequent monthly grace period depends on the length of the grace period.

What can I do to fix this payment scheduling problem? Not much, unless you are willing to move to a longer monthly grace period, which will smooth the payment schedule to some degree (a rather radical move of very limited benefit). And you cannot do anything about the election date’s role in the payment “bunching” problem, because any attempt to restrict elections to convenient dates would not go over well with the IRS and the courts.

Conclusion

Calculating the first payment amount and due date is risky business. To be in compliance with the law—and to stay out of court—we recommend that you keep the following points in mind:

- Qualified beneficiaries cannot be required to make payment prior to the end of the 45-day period for any period of COBRA continuation coverage.
- There is no first payment grace period; the last day of the 45-day period is the final due date.

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- You are not required to account for weekends and holidays when calculating due dates, but making such adjustments to the first payment due date and the monthly grace period end dates is a safe and fair-minded practice.
- The Previous Payment Month calculation is preferred, because it does not compromise the qualified beneficiary's right to a minimum 30-day grace period.
- There is no clean solution to the problem that arises when the first payment due date and the last day of the subsequent payment grace period coincide.

As always, apply your COBRA administration policies consistently among all qualified beneficiaries.