

COBRA Tips®

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Ex-spouse Claims Entitlement to 36 Months; Broker and Carrier Disagree

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The following is an excerpt from [Questions and Answers from the COBRA Help Desk—Part II](#):

Broker: An employee left a client company and she and her husband went on COBRA for 18 months. Three months later, she joined her new employer's plan and her husband stayed on COBRA. In May of 2005 they divorced. At the end of August 2005, the ex-husband's 18-month COBRA period expired. The ex-husband maintains that he is entitled to another 18 months of continuation due to the divorce. But the divorce caused no loss of coverage - the end of the continuation period did, and therefore I feel that he is not entitled to any additional continuation, either from the divorce or from the end of the continuation period. The employer agrees with me, as does the insurance carrier involved. However, the ex-husband's attorney says that he is entitled to additional coverage. Who is right?

OnQue: Whether the former spouse in this case is entitled to the 18-month extension depends upon the following:

- The divorce must have occurred before the qualified beneficiary's original 18-month coverage period expired. That requirement appears to be satisfied in this case.
- The qualified beneficiary must have notified the plan of the divorce within 60 days of the divorce decree date, provided the plan properly disclosed the notice requirement to the qualified beneficiary in its Summary Plan Description and in the initial Qualifying Event Notice. Otherwise, the 60-day notice requirement is not enforceable.

I assume from your description of the case that the plan administrator did not learn of the divorce within the 60-day notice period. If that assumption is valid and if the plan administrator can verify that the former spouse was properly informed of the notification requirement, then he is not entitled to the extension.

I would urge your client to obtain legal advice before taking any action. Because the denial of COBRA continuation coverage is a serious matter, verification that the employer has met its disclosure obligations is critical. On the other hand, offering such coverage when not required by law sets a dangerous precedent, because in so doing the plan administrator is making an exception to the 60-day notification requirement. That decision could result in an obligation to provide the same extension of the notification period to all individuals who experience a second qualifying event. Also, the insurers would have to agree to provide extended coverage under such circumstances.

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