

Understanding When COBRA Should Not Be Offered

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Offering COBRA continuation coverage to people who are not legally entitled to it can be a very costly mistake. If COBRA is elected, backing out of the problem can be extremely difficult, particularly when claims for medical services are involved. And it happens.

For self-funded plans, such administrative errors often place a very costly burden on the employer—the medical expenses typically dwarf the premium dollars collected from the erroneously covered individuals. For fully-insured plans, the employer may be forced to bear the crippling burden of paying all the medical expenses incurred by people who accepted the company's generous offer, but were declined by the insurer because they do not qualify for continuation under COBRA.

Conditions that Trigger an Offer of COBRA

The requirement to offer COBRA continuation coverage is triggered by three conditions:

1. The individual is eligible for benefits and is covered on the health plan on the day before the COBRA qualifying event.
2. The qualifying event causes a loss of coverage. A loss of coverage means the individual ceases to be covered under the same terms and conditions as in effect immediately before the qualifying event.
3. The qualifying event is one of the following:
 - The death of the covered employee;
 - The termination, other than by reason of gross misconduct, of a covered employee's employment;
 - A reduction of hours, including employees on non-FMLA leave of absence who are still employees, but are not actively working;
 - The divorce of a covered employee;
 - The legal separation of a covered employee (*often not a qualifying event*);
 - A covered employee's entitlement to Medicare benefits under Title XVIII of the Social Security Act (*rarely a qualifying event*);
 - A dependent child's ceasing to be a dependent child of a covered employee according to the plan's eligibility rules; or,
 - A proceeding in bankruptcy under Title 11 (*affects covered retirees*).

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Some Examples of Why COBRA Cannot (or Should Not) be Offered

Employer Changes Provider Contracts

When an employer changes its insurance carrier or HMO provider, and plan beneficiaries lose coverage as a result, a COBRA qualifying event has not occurred. However, it is important to be aware that when a change to a new insurer results in a loss of coverage to qualified beneficiaries who are currently covered under COBRA, *the employer* is responsible for continuing coverage for those individuals, regardless of the carrier's refusal to offer coverage. Great care should be taken to ensure that no COBRA beneficiaries will lose coverage when changing carriers.

Employer Terminates Coverage for a Division or Class of Employees

If the employer terminates coverage for a division or class of employees, yet still maintains a plan for other employees, a qualifying event has not occurred and COBRA should not be offered.

Employer Terminates Plan or a Contract is Terminated by the Insurer

When an employer terminates a health plan or an insurance carrier terminates a group contract for non-payment, a qualifying event has not occurred.

Employee Voluntarily Elects to Drop Coverage

A qualifying event does not occur when an employee voluntarily drops coverage for himself or his dependents. However, if coverage is dropped in anticipation of a qualifying event, such as divorce, and the employer is notified within 60 days of the event date, then COBRA must be offered to the spouse and dependent children.

Change in Employment Class Results in Loss of Coverage

When a change in class of employment, job title, or location results in a loss of eligibility for benefits, COBRA will usually not be available to the employee. However, if a class change also results in a reduction in hours and loss of coverage, COBRA must be offered.

Employee Fails to Meet Performance Goals

Some plans require employees to meet certain performance goals in order to be eligible for health benefits. (This eligibility requirement is most common in sales organizations.) A loss of coverage due to an employee's failure to meet such goals is not a qualifying event.

Administrator Not Notified Within 60 days of a Qualifying Event

When an employee or dependent fails to notify the plan administrator of a qualifying event, such as a divorce, within the 60-day notification period, the employer need not offer COBRA continuation coverage.

Legal Separation Not Included in Plan Eligibility Rules

Legal separation is only considered a qualifying event when the plan explicitly states that it causes a loss of coverage. While most plans include divorce in the list of events that trigger ineligibility, few include legal separation. If legal separation does not result in a loss of coverage under the plan's rules, then it cannot be a qualifying event.

Dependent or Employee Becomes Entitled to Medicare

A dependent's Medicare entitlement is not a qualifying event. According to the regulations, an employee's Medicare entitlement is a COBRA qualifying event for the

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covered spouse and dependent children. However, because of Medicare's Secondary Payer Rules, which generally prohibit an employer's group health plan from taking Medicare entitlement into account or terminating coverage because of Medicare, this situation will rarely result in a qualifying event.

Employee Terminated for Gross Misconduct

When an employee is terminated for gross misconduct, the employee, covered spouse and dependent children are not entitled to COBRA benefits. However, administrators must exercise extreme caution when contemplating the denial of continuation coverage under such circumstances. The COBRA statute does not define the term, and the federal courts have not agreed on when it is proper to apply this exception to the termination of employment rule. Plan administrators should seek the advice of legal counsel before denying continuation coverage because of gross misconduct.

Conclusion

Understanding when not to offer COBRA continuation coverage is just as important as knowing when it must be offered. Unfortunately, many employers think it is safer to offer COBRA to everyone, which is just as dangerous—and expensive—as failing to offer it to legitimate qualified beneficiaries.

Related COBRA Tips

[The Gross Misconduct Exception to the Termination Rule](#)