



A COBRA PRIMER



HARPER GERLACH, PL
4110 Southpoint Boulevard
Suite 228
Jacksonville, Florida 32216
Telephone: (904) 296-7000
Facsimile: (904) 296-7301

www.harpergerlach.com

The Consolidated Omnibus Budget Reconciliation Act (“COBRA”) was passed in 1986 in an effort to help employees (and their family members) avoid the loss of their health insurance in between jobs or when other events cause coverage. COBRA amends the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1161 et. seq., Public Health Service Act and Internal Revenue Code (IRC) 26 U.S.C. § 4980B.

The U.S. Department of Labor (DOL) is responsible for interpreting and administering the COBRA provisions that appear in ERISA, while the Internal Revenue Service (IRS) is responsible for interpreting and enforcing the provisions that appear in the IRC.

If a plan does not comply with COBRA, ERISA gives certain parties – including qualified beneficiaries and the DOL – the right to file a lawsuit to redress the noncompliance. An employer that fails comply with COBRA’s requirements may be subject to a penalty of up to \$110 for each day of noncompliance, as well as liable for the individual’s medical expenses, attorney’s fees, and other costs associated with the litigation.

TERMINOLOGY

- A *covered employer* is one that is required to comply with COBRA – generally, employers that have at least 20 employees and sponsor a group health plan for their employees.
- *Continuation coverage* is the group health plan coverage that COBRA requires most employers to allow qualified beneficiaries to maintain for a limited period of time (usually 18 or 36 months) after they would otherwise become ineligible for it.
- A *qualified beneficiary* is anyone (generally, employees and their dependents) who qualifies for continuation coverage under COBRA.
- A *qualifying event* is an event that triggers the right to COBRA continuation coverage.

Employers must count both full-time and part-time employees in determining whether they are covered by COBRA. 26 C.F.R. § 54.4980B-2. Part-time employees are counted as “fractional” employees. To assign a fractional value to part-time employees, divide the number of hours the part-time employee worked by the number of hours an employee must work to be considered full-time. Once subject to COBRA for a given year, continuation coverage is required for qualifying events that occur during that year even if you later fall below 20 employees.

Multi-Employer Plans

A multi-employer plan is defined as a plan to which more than one employer is required to contribute that is maintained pursuant to one or more collective bargaining agreements. Multi-employer plans can avoid COBRA coverage even if the plan covers far more than 20 employees, provided each employer in the plan employs fewer than 20 employees during the preceding calendar year. 26 C.F.R. § 54.4980B-2.

CHURCHES AND GOVERNMENT EMPLOYERS

COBRA does not apply to churches or associations of churches. Also, federal and state governments and any agencies or instrumentalities of federal or state governments are exempt from COBRA. Note, however, that:

- 1) federal employees are entitled to similar continuation coverage under the Federal Employees Health Benefits Amendments Act of 1988; and
- 2) state and local governments generally must comply with parallel requirements under the federal Public Health Service Act.

BUSINESS REORGANIZATIONS

When a company sells corporate stock or assets, the question that often arises is whether the selling company or the buying company is responsible for providing COBRA coverage. In general, for both stock and asset purchases, the company that is being sold remains obligated to offer continuation coverage to existing qualified beneficiaries. 26 C.F.R. § 54.4980B-2. But if that company ceases to provide any group health plan to any employee as a result of the sale, the buyer is responsible for providing COBRA coverage to those qualified beneficiaries.

Note that there is nothing to prevent the buyer and seller from reallocating their COBRA liabilities by contract. However, if the company that has assumed contractual liability for COBRA fails to comply with COBRA, the other party will be required to step in and provide COBRA coverage if that is what it would have been required to do without a contract.

What is a

Group Health Plan?

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The term “group health plan” is defined very broadly to include any plan that provides health care benefits to employees. It includes both self-insured plans and plans that are funded with an insurer. It also includes one or more individual insurance policies in any arrangement under which health care is provided to two or more employees. 26 C.F.R. § 54.4980B-2.

A plan is considered to provide “health care” if it provides coverage for “the diagnosis, cure, mitigation, treatment, or prevention of disease, and any other undertaking for the purpose of

affecting any structure or function of the body. 26 C.F.R. § 54.4980B-2. This means that, apart from traditional health insurance, COBRA can apply to a variety of other health-related employee benefits such as dental and vision benefits, health flexible spending accounts (FSAs), medical reimbursement accounts (MRAs), health reimbursement arrangements (HRAs), and some employee assistance programs (EAPs). Medical savings accounts (MSAs), health savings accounts (HSAs), life insurance, or long-term care insurance, are not normally included.

Continuation Coverage

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“Continuation coverage” is the period of time during which qualified beneficiaries are entitled to remain on a health plan beyond the point at which they would otherwise lose their coverage under that plan. COBRA requires group health plans to offer continuation coverage to covered employees, former employees, spouses, former spouses and dependent children when group health coverage would otherwise be lost due to certain specific or “qualifying” events.

The maximum length of continuation coverage can be anywhere from 18 to 36 months depending on:

- 1) the type of qualified beneficiary electing coverage,
- 2) the type of qualifying event that occurs, and
- 3) whether a qualified beneficiary is disabled or whether a second qualifying event occurs.

Generally, continuation coverage starts running on the date of the qualifying event. Continuation coverage may be cut short if the employee chooses to terminate coverage early or in the event of other occurrences permitting coverage termination.

QUALIFIED BENEFICIARIES

“Qualified beneficiaries” includes employees and/or their dependents who were covered under the employer’s group health plan on the day before they experienced a COBRA qualifying event that would otherwise cause them to lose coverage.

QUALIFYING EVENTS

The following qualifying events entitle qualified beneficiaries to elect continuation coverage:

- Termination of employment for any reason other than gross misconduct.
- Reduction of hours to the point that the employee is no longer eligible to participate in your group health plan.
- When a covered employee becomes entitled to Medicare.
- When a covered employee or spouse gets divorced or legally separated.
- For certain retired employees and their family members, when the employer