



The Top 10 Concepts Agents Need To Know About COBRA

September 20, 2018

Q: Can you address the QE "Entitled to Medicare 36 months event? That it ONLY applies if entitlement to Medicare causes the employee to "lose coverage"?

A: It is only a QE for the spouse and children if the non-MSP employer has rules whereby coverage is terminated when the employee enrolls onto Medicare. It is not a COBRA QE if the working person waives off of the employer plan.

Q: Are municipal schools subject to COBRA? What if the Union contract only allows for a mini-COBRA i.e. 8 weeks?

A: Agencies and instrumentalities of state and local governments (such as public school systems) are subject to COBRA unless they qualify for the small employer exception. If the school system's employees are covered through a multiemployer (union) plan, COBRA's obligations apply to that plan (as opposed to the employer). Assuming the small employer exception does not apply to the union plan (for example, if every employer who contributes to the plan has less than 20 employees), the union contract cannot override the multiemployer plan's obligation to offer COBRA to its Qualified Beneficiaries.

Q: Will under-20 employer groups enrolled in an Association Health Plans, (AHPs), be subject to COBRA as a result of participation in the AHP?

A: The DOL will provide guidance on that in the future.

Q: Is an EAP offered as part of life insurance subject to COBRA?

A: If the EAP provides "medical care" within the meaning of Internal Revenue Code Section 213(d), it will be subject to COBRA. If it does not, it is not subject to COBRA. The variance in the different services offered by EAPs make this question impossible to answer without more information about the specific services provided by the EAP

Q: Is telemedicine subject to cobra?

A: If the telemedicine service provides "medical care" within the meaning of Internal Revenue Code Section 213(d), it will be subject to COBRA. If it does not, it is not subject to COBRA. By their nature, telemedicine services almost always provide medical care and will be subject to COBRA. For example, medically trained counselors providing advice on treatments for common ailments constitutes medical care under the rules. Telephone interviews resulting in the issuance of a prescription also constitutes medical care.

Q: If someone 65+ retired on April 1st 2018 and their employer provided them with employee coverage for the full month of April and it officially converted to COBRA effective 5/1, January 1st 2019 would be the latest that he could have his Medicare Part B effective without a Late Enrollment penalty, correct?

A: Once this individual is enrolled onto COBRA, Medicare is primary. If s/he wants no gap in Medicare coverage, it must be in place and effective before COBRA begins. Regarding late penalties, you are correct as the penalty is 10% for each 12 month period without Part B.



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Q: In California the minimum number of hours worked to be a full-time employee is 30 hours. So, in California does the employer calculate the fraction of hours for part-time employees to determine full-time equivalents on 30 hours per week or 40 hours per week?

A: California's 30 hour per week eligibility rule does not entirely decide the issue but it may "drive" the answer. The issue is addressed in Treasury Regulation Section 54-4980B-2, Q/A 5(e). That rule states that the number of hours required to be considered a full-time employee "is based upon the employer's employment practices, except that in no event may the hours required to be considered a full-time employee exceed eight hours for any day or 40 hours for any week." There is not one single bright line factor but I suspect in California, because of the rule that you cite many employers will use 30 hours as their standard designation of full-time status.

Q: A person enrolling in Medicare is not a qualifying event in itself for a spouse and/or dependents?

A: Correct.

Q: Regarding gross misconduct of an employee, what about the employee's dependents, are the dependents qualified beneficiary?

A: No one in the family gets COBRA if not offered due to gross misconduct of the employee

Q: Is an employer able to hold a COBRA application from being forwarded to the insurance company for enrollment until the employee leaving the Group pays the premium? And, if they chose at day 59 to accept COBRA, with the 45 days to pay, I assume they must pay all retro premiums?

A: The employer is able to withhold the COBRA application from the insurance company until the Qualified Beneficiary pays the required premium. The initial premium payment can be required to cover the period through the end of the month preceding the month in which the initial premium payment deadline falls. Payment can't be required for the current month until the end of the 30 day grace period. For example, if payment is made on September 23, as long as the payment covers the premiums due for the period of time between the Qualifying Event / Loss of Coverage and August 31, the Employer would have to reinstate the coverage at that time. If the Qualified Beneficiary does not pay the September premium by September 30, they employer could then terminate the coverage retroactive to August 31 at that time.

Q: 36 months cobra for Medicare, but Medicare entitlement IS NOT A COBRA QE?

A: An active at work individual's decision to drop the employer plan and go onto Medicare is NOT a QE for the family.

Q: If I have a 20+ group and the employee is eligible for Medicare but his spouse is under 65 and the employee chooses to go on COBRA, does that then mean his spouse will be eligible to elect COBRA coverage for 18 or 36 months?

A: The employee can choose COBRA only if he's had a QE i.e. termination of employment or reduction of hours. If there is an event, the entire family, if they were covered on the employer plan, could elect COBRA for 18 months.



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Q: How does the previous employer know if the former employee needs to be termed off of their COBRA plan when they enroll for group coverage under the new employer plan?

A: They often don't. COBRA does not require Qualified Beneficiaries to disclose new group coverage to the Plan Administrator / Plan Sponsor. For this reason, many employers don't actively enforce this early termination provision.

Q: Can you clarify the comment about having Dental COBRA coverage, and would lose it if the QB got coverage under a new 'health' plan?

A: Whenever the ex-employee elects coverage under another employer's plan, all COBRA ends, not just for the types of plans they elect coverage under with the other employer.

Q: Medicare Entitlement: for a group subject to Federal COBRA, should an employee become entitled to Medicare and takes it at this time, this would allow dependents to qualify for COBRA, but if he decides at a later time to drop his group coverage and take Medicare (next OE for example) the dependents no longer qualify for COBRA, unless the carrier decides to allow it, even though they will lose coverage?

A: There is no COBRA event for the covered family if the active at work 65 + year old waives off the employer plan.

Q: How are HSA contributions made by an employer into employee accounts handled under COBRA? For example some employers make periodic contributions.

A: HSA contributions are not subject to COBRA. Previously made HSA contributions are the individual's property regardless of any continuation rights. On the other hand, individuals have no continuation rights to future employer contributions under COBRA. However, the HSA Comparability rules separately may require employers to contribute HSA contributions after an employee terminates employment depending on their employer contribution schedule.

Q: Does Cobra depend on the state where the employer is domiciled, or what state the employee lives?

A: COBRA is not state specific so the state where the employer is domiciled or where the employee lives are both irrelevant. State continuation laws on the other hand typically regulate plans issued in that particular state. Therefore, the applicable state continuation laws will be determined by which state the policy is issued in. That is commonly where an employer is domiciled but also may be where an employer has other significant operations (employers can purchase different policies to cover employees in different states). State continuation laws generally don't depend on where an employee resides but some specifically limit themselves to protections for residents of that specific state.



Compliance Corner Webinar:

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Q: I understand that some PEOs charge a significant fee to keep someone on COBRA if the group breaks away from the PEO and the new carrier will not allow the former employee to enroll through the new non-PEO plan for COBRA. Is this permissible?

A: The answer would depend on who was the individual's former employer. In this situation, the carrier would be taking the position that the individual is not a former employee of the plan sponsor but instead was an employee of the PEO. Therefore the plan sponsor has no COBRA obligation to cover the individual and therefore the carrier has no obligation to provide them coverage under the insured plan. The PEO has the COBRA obligation but the employer/plan sponsor has contractually agreed to compensate the PEO for taking on that liability.

Q: Is there ever a time when an employer will cover COBRA premiums?

A: The employer may pay for COBRA premium as long as s/he does so for all similarly situated individuals