

What is the best way to give a former employee a COBRA notice?

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) is a federal law enacted to protect the rights of individuals who would otherwise lose healthcare coverage. COBRA requires employers to offer employees, spouses, and/or their dependent children the opportunity to buy health insurance at group rates when they're faced with losing employer-sponsored coverage as a result of certain "qualifying events." The continuation coverage required by COBRA consists of the regular health benefits that the covered employee, spouse, and child had prior to losing coverage.

A qualifying event is defined as an event that results in loss of health coverage under a company's group health plan. The employer has 30 days from the qualifying event to notify the plan administrator. The plan administrator has 14 days from the date of notification to mail a COBRA notice and election form.

Generally, a terminated employee and/or any of his affected dependents have 60 days from the date coverage is lost or the date the written COBRA notice is given, whichever is later. Everyone who's affected by the loss of coverage and covered on the group health plan (limited to the employers, his covered spouse and covered dependent children) prior to the qualifying event is called a qualified beneficiary.

The COBRA regulations cover how written notices should be delivered. However, the courts and the Department of Labor (DOL) consider it "good-faith" compliance to deliver the COBRA notice via first class mail and the notice and any applicable election forms clearly indicate that they each have separate independent COBRA rights. When the notice applies to a covered employee and a husband or wife, one notice is sufficient as long as both the covered employee and spouse reside at the same address. Notices properly mailed are generally considered provided on the date sent, regardless of whether they're actually received.

As an extra precaution, many COBRA plan administrators mail COBRA notices with the United States Postal Service (USPS) Proof-of-Mailing certificate. The employer or plan administrator then have evidence that the COBRA notice was actually mailed to the last known address of the covered employee and/or spouse. The employer or plan administrator also should keep copies of all COBRA notices on file. When a COBRA notice is supposed to cover the employee and spouse, and it isn't mailed, there's no evidence that the spouse is notified of his COBRA rights. A qualified beneficiary who can show sufficient evidence of never having received a COBRA notice can seek equitable relief in court for the violation. To avoid costly penalties for noncompliance, employers should adopt set COBRA administration procedures. Below is a timeline illustrating COBRA notice requirements:

| EVENT | TIMELINE |
|---|---|
| 1. COBRA Initial Notice must be provided. | Within 30 days after the employee first becomes enrolled in the group health plan. |
| 2. Employer to notify plan administrator. | Within 30 days after the qualifying event date. |
| 3. COBRA Qualifying Event Notice | 14 days from the date the plan administrator to qualified beneficiaries receives notification. |
| 4. Qualified beneficiary has right to elect COBRA Coverage. | 60 days from the date of COBRA notice. |
| 5. Qualified beneficiary Initial premium due. | 45 days from the date of electing COBRA. |
| 6. Monthly COBRA premium grace period. | 30 days after the first day of each month. |
| 7. Employee/qualified beneficiary to notify plan administrator of a qualifying event. | 60 days. |

In many COBRA court cases, the aggrieved qualified beneficiary prevails by providing evidence that the employer or plan administrator doesn't have an established COBRA notice administration procedure in place. To be safe, make sure that you have a procedure for your company or you may be subject to

statutory penalties of \$100 per day per incident and possible Internal Revenue Service (IRS) and DOL audits. Also, the IRS can issue additional fines in the form of excise taxes for violations. In addition, don't forget to check your state continuation coverage mandates.

For more information, visit the IRS Federal Register at www.irs.ustreas.gov.

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