When is an employee eligible for COBRA?

Under the Consolidated Omnibus Budget Reconciliation Act, employees participating in an employer-provided group health plan become eligible to elect continuation coverage when they face loss of coverage due to termination of employment for reasons other than gross misconduct or a reduction in work hours. For COBRA purposes, a loss of coverage occurs whenever an employee ceases to be covered under the same terms and conditions that applied before the qualifying event.

Temporary layoffs, disability leaves and other leaves of absence, strikes, and lockouts are considered qualifying events triggering COBRA eligibility when they cause loss of group health plan coverage. If retirement affects health benefits, then this event qualifies as a termination triggering COBRA rights, even if the only change involves paying higher premiums to remain in the employer's plan. Retired employees also can become eligible for COBRA coverage when their former employer's bankruptcy would cause them to lose group health plan coverage.

For an employee to be eligible for COBRA coverage, the employer sponsoring the group health plan must have employed at least 20 employees on more than half of the typical business days in the preceding calendar year; smaller employers are not subject to the law. To receive COBRA coverage, employees or retirees must have been enrolled in the plan on the date of the qualifying event—whether a termination, a reduction in work hours, or the employer's bankruptcy—and not simply be eligible for coverage. In addition, nonresident aliens are not entitled to COBRA coverage if they received no earned income from U.S. sources while enrolled in the employer's health plan.

Once a qualifying event triggering COBRA rights occurs, employers must notify the plan administrator within 30 days. With 14 days of receiving this notice, plan administrators must notify affected employees—and any spouses or dependents who also will lose coverage—about their right to elect COBRA coverage. Employees then have an election period of at least 60 days from the date they receive this notice of their COBRA rights or, if later, the date on which regular health coverage would be lost. If the health plan allows retroactive reinstatement, employers must continue COBRA-eligible employees' regular coverage during the election period. Employees who initially decline COBRA coverage can change their minds at any point during this election period, revoke their waiver, and instead opt to receive continuation coverage.

Once the election period expires, employees who did not elect COBRA coverage lose their regular coverage and any rights to continuation coverage. Employees who elect COBRA coverage, but fail to pay the initial premium within 45 days, also lose their rights to continuation coverage. So an employee’s initial eligibility for COBRA can run as long as 149 days from the date of the qualifying event, once the maximum deadlines for notices, elections, and premium payments are considered.

Initial eligibility for COBRA coverage can be affected when a qualifying event does not cause an immediate loss of coverage. The duration of COBRA coverage is measured from the date of the qualifying event, even if loss of health plan coverage will not occur until a later time. So if an employee’s regular health plan coverage after the qualifying event continues beyond the maximum period of COBRA coverage, then the employee is not entitled to COBRA coverage, unless the plan elects to extend COBRA beyond the legally required periods. For example, an employee who receives a severance package that continues health plan coverage for up to two years at the employer’s expense usually is not entitled to COBRA after exhausting these severance benefits, since COBRA limits continuation coverage after termination to 18 months. However, if this employee becomes disabled after termination, COBRA would allow up to five months of continuation coverage after severance benefits are exhausted since up to 29 months of COBRA coverage applies in the event of disability.

Employees who elect COBRA coverage remain eligible to receive these benefits until:
• the maximum coverage period expires,
• they fail to pay required premiums,
• they become covered by another group health plan that does not limit coverage of pre-existing conditions,
• they enroll in Medicare, or
• the employer eliminates all group health plans for active employees.

The typical limit on COBRA coverage for employees losing regular coverage due to termination or reduction in work hours is 18 months. This period can be extended to 29 months for employees who become disabled, but this extended coverage ends once the employee is no longer disabled. When an employer’s bankruptcy triggers COBRA rights, retirees can continue COBRA coverage until they die.

**Other beneficiaries’ COBRA rights.** This question only addresses issues affecting employee eligibility for COBRA coverage. Spouse and dependents enrolled as family members on an employee’s group health plan also have COBRA rights, but the types of qualifying events triggering their COBRA rights and the maximum periods of COBRA coverage can differ from the ones applicable to employees.

(BNA; 12/08)