

EMPLOYER'S RESPONSIBILITIES UNDER COBRA

The Consolidated Omnibus Budget Reconciliation Act (COBRA) places certain requirements on employers who employ, on a typical business day, twenty (20) or more employees, regardless of whether they are covered under the employer-sponsored medical, dental, vision and/or Section 125 flexible benefit plan(s). In addition, employer groups with less than 20 employees that obtain their group insurance through an association in which at least one association member has more than 20 employees are also subject to the COBRA continuation requirements.

Failure to comply with COBRA when applicable may result in severe tax penalties to the violating employer; **therefore each employer is urged to consult with their attorney regarding its applicability.** If you have determined COBRA is applicable to your company, the attached informational materials are designed to assist you in complying with its requirements. However, **we recommend that you use this information and material by and in conjunction with any advice from your attorney.**

The law requires these employers to provide employees and their dependents, who are covered under the employer's group health benefits plan(s), the right to temporarily continue their group health, dental, vision and/or Section 125 flex coverage at group rates under certain circumstances, referred to as "qualifying events" under COBRA, when coverage under the plan(s) would otherwise end. **All** covered employees and their covered dependents must be notified in writing of this right to elect continuation of coverage pursuant to COBRA when they first enroll in an employer-sponsored benefit that is subject to COBRA rules and **again** at the termination of such coverage due of a "qualifying event".

Qualifying events under COBRA include:

1. Employee's job termination (other than for gross misconduct);
2. Employee's reduction of working hours below the number of hours required for the plan(s) eligibility;
3. Employee's divorce or dissolution of marriage (causing spouses coverage to cease);
4. Employee's entitlement to Medicare (if it causes coverage to cease for dependents);
5. Child's ceasing to be an eligible dependent;
6. Employee's death (causing coverage to cease for spouse and/or dependents).

The following INSTRUCTIONS TO EMPLOYERS SUBJECT TO COBRA detail **WHAT** needs to be provided, **HOW** and **WHEN** it should be provided.

We, at Benefit Design & Strategies, LLC hope this information will be helpful in meeting your current and future obligations under COBRA law. Please note that this information and attached materials are not to be taken as either legal advice or full disclosure of all requirements and obligations under COBRA. You should use this material only in conjunction with any advice from your attorney. You may also wish to alter some of the material to specifically fit your particular group plan.

INSTRUCTIONS TO EMPLOYERS SUBJECT TO COBRA

If your company or non-profit organization is required by COBRA to offer continued health, dental, vision and/or Section 125 flex plan coverage to your insured employees and their dependents, following these instructions can help you to comply with the COBRA requirements.

A. NOTIFICATION TO ALL COVERED EMPLOYEES AND DEPENDENTS:

Fill in **your firm's name** at the top of the attached "Continuation of Coverage Notice" and promptly deliver this Notice to each insured employee. (The **employee's and covered dependent's** obligations under COBRA are discussed in this Notice.) If you know that an employee's covered spouse is not living with the employee, this Notice should also be mailed to the spouse at his or her last-known address. If, in the future, you add new employees to your medical, dental, vision and/or Section 125 flexible benefit plans, you should promptly furnish this Notice to them at the time each enrolls in any of the listed benefit plan(s).

B. NOTIFICATION AT TIME OF COVERAGE TERMINATION:

Within 14 days after you are notified or become aware of a "qualifying event" which will terminate a person's coverage under your group medical, dental, vision plan and/or Section 125 flex plan, you must **deliver or mail (preferably by "Registered Mail Return Receipt Requested") to the terminating person(s):**

1. A "Continuation of Coverage Notice" (remember to enter your firm's name at the top; **and**
2. A **partially completed** "Insurance Termination/Continuation Request (COBRA)" form.

C. NOTIFICATION DURING COBRA CONTINUATION:

When an employee's dependents are continuing coverage under COBRA **as a result of the employee's termination of job or reduction in working hours** (only), and if such dependents' continuation coverage terminates because of:

1. Employee's divorce or dissolution of marriage;
2. Child's ceasing to be an eligible dependent;
3. Employee's entitlement to Medicare; or
4. Employee's death;

then **each** such dependent may elect another continuation period under COBRA. Therefore, **within 14 days** after you are notified or become aware of one of the four (4) "qualifying events" above, **you must again deliver or mail (preferably by "Registered Mail Return Receipt Requested") to the terminating dependents:**

1. A "Continuation of Coverage Notice" (remember to enter your firm's name at the top); **and**
2. A **partially completed** "Insurance Termination/Continuation Request (COBRA)" form.

D. INSTRUCTIONS FOR COMPLETION OF “INSURANCE TERMINATION/CONTINUATION REQUEST (COBRA) ELECTION” FORM:

1. In the topmost portion of the form, fill in the date you are mailing the form, the employee’s name, your employer group number or policy number and your firm’s name and mailing address;
2. Using the following chart, fill in the name of the COBRA-eligible person(s) whose coverage is terminating in the appropriate space:

<u>QUALIFYING EVENT:</u>	<u>COBRA-ELIGIBLE PERSONS:</u>	<u>MAIL NOTICE AND FORM TO:</u>
a. Employee’s job termination (for any reason except gross misconduct)	Employee Covered Spouse Covered Child(ren)	Employee (& Spouse if covered)
b. Employee’s reduction of working hours	Employee Covered Spouse Covered Child(ren)	Employee (& Spouse if covered)
c. Employee’s divorce/dissolution of marriage	Covered Spouse	Covered Spouse
d. Child’s ceasing to be eligible dependent as defined by the plan	Covered Child losing coverage	Covered Child losing coverage
e. Employee’s death	Covered Spouse Covered Child(ren)	Covered Spouse, or if only Children covered - each covered Child or the child’s guardian
f. Employee’s Medicare entitlement (assumed at age 65)*	Covered Spouse Covered Child(ren)	Covered Spouse, or if only Children covered - each covered Child

** Under the terms of your group medical plan, the employee’s Medicare entitlement does not terminate coverage. It is a qualifying event only when it occurs during a COBRA continuation period due to the employee’s job termination or reduction in working hours.*

3. Fill in the date the coverage ended or will end. That date is usually the **end** of the premium month in which the qualifying event occurred. (If the premium due date is the 1st of the month, then the end of the premium month is the **last day** of the month. With a few carriers, if the premium due date is the 15th of the month, then the end of the premium month is the **14th of the next month**).
4. Check the block next to the qualifying event that applies and enter the date the event occurred.
5. Only the employee and qualified beneficiaries who were covered by one or more COBRA-eligible benefits on the day prior to the qualifying event may elect to continue

coverage. An employee cannot add family members under COBRA who were not previously enrolled.

6. An employer may add two percent (2%) to the COBRA premium(s) to cover administrative costs of notification and collection of the COBRA premium.
7. On the second page of the election form under “The Scheduled Premium Payment,” first paragraph, fill in the scheduled payment amount to be paid by the person(s) being continued, **and**, in the next paragraph, provide a monthly due date for that person’s premium payment to be **received** by the firm. (The monthly due date should be no later than the date you normally remit your group’s premium). Premium payments are to be **made to the order of your firm’s name**, not to the carrier. Usually the person’s scheduled payment amount does not differ from his/her previous regular payments, absent the two percent surcharge; but if you think it may differ, **you should call BDS or the carrier to determine the exact amount**. Please note that the person is allowed up to forty-five (45) days after the employee signs the election request for continuation of coverage to send you his/her **first** premium payment (which should include any back-payment amounts). This forty-five (45) day period for payment to be made is required under COBRA.
8. The remaining portion of the election form must be completed by the employee and any eligible dependents (or their appointed guardian) and, returned within sixty (60) days after the **later** of:
 - a. The date the notice was mailed or delivered to the eligible person, or
 - b. The date the former employee’s insurance coverage ends.

The election form must be delivered or mailed back to you, the employer. If it is **not** postmarked or delivered to you within the sixty (60) days as determined above, then the COBRA-eligible person and his/her qualified dependents are no longer eligible for COBRA continuation coverage.

E. VERY IMPORTANT: EMPLOYER’S POTENTIAL LIABILITY FOR FAILURE TO NOTIFY CARRIER(S)

The employer must send all requests for COBRA continuation received from the former employee or his/her qualified beneficiaries to your health carrier as soon as possible, but **no later than three (3) months following the date the health insurance for the eligible person(s) is terminated**. You should wait for the COBRA-eligible person’s check to clear before including the COBRA premium(s) in the aggregate premium payment to your carrier(s). If the request and the initial payment (including back-payment) are not sent (i.e. postmarked) to the carrier within **three (3) months** after the person’s insurance terminates, then the carrier may not retroactively cover the person(s) requesting COBRA continuation and the employer could be liable for medical expenses incurred after the COBRA continuation coverage was to have gone into effect.