

COMPLIANCE OVERVIEW

Provided by Brown & Brown Benefit Advisors

COBRA Qualifying Events

The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal law that requires most employers to provide former employees and dependents who lose group health benefits due to a qualifying event with an opportunity to continue group health coverage for a limited period of time.

Most employer-sponsored group health plans are subject to COBRA's continuation coverage requirements. Under COBRA, an employer must offer continued coverage to a qualified beneficiary when group health coverage ends (or would end) due to a qualifying event. COBRA includes a specific list of seven events that can be considered qualifying events if they result in a loss of group health coverage.

This Compliance Overview provides information about each type of qualifying event, the individuals to whom a coverage offer must be made and how long the continuation coverage must extend.

LINKS AND RESOURCES

- [Employer's Guide](#) to Group Health Continuation Coverage under COBRA
- [Frequently Asked Questions](#) on COBRA Continuation Health Coverage
- Department of Labor [final rule](#) on Health Care Continuation Coverage

HIGHLIGHTS

QUALIFYING EVENTS

- Termination of a covered employee's employment (other than for gross misconduct)
- Reduction in a covered employee's hours of employment
- Divorce or legal separation from a covered employee
- Death of a covered employee
- Ceasing to be a dependent child under the terms of the plan
- Covered employee's entitlement to Medicare
- Employer bankruptcy (for retiree plans)

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.



QUALIFYING EVENTS

An employer that is subject to COBRA must offer continuation coverage only when group health plan coverage ends (or would end) due to a qualifying event. COBRA includes the following specific list of seven events that can be considered qualifying events if they result in a loss of group health plan coverage:

1. Termination of a covered employee's employment (other than for gross misconduct)
2. A reduction of a covered employee's hours of employment
3. A divorce or legal separation from the covered employee
4. The death of a covered employee
5. Ceasing to be a dependent child under the terms of the plan
6. The covered employee's entitlement to Medicare
7. Employer bankruptcy (for retiree plans)

If an employee or dependent loses group health plan coverage for a reason that is not a COBRA-qualifying event, the employer is not required to offer COBRA coverage. Similarly, if the qualifying event does not cause a loss of group health coverage, the employer is not required to offer COBRA coverage.

COBRA coverage must be offered to qualified beneficiaries when:

- A qualifying event occurs when the health plan is subject to COBRA; and
- The qualifying event causes a loss of coverage under the plan for a covered employee, covered spouse or covered dependent child.

IMPORTANT DEFINITIONS

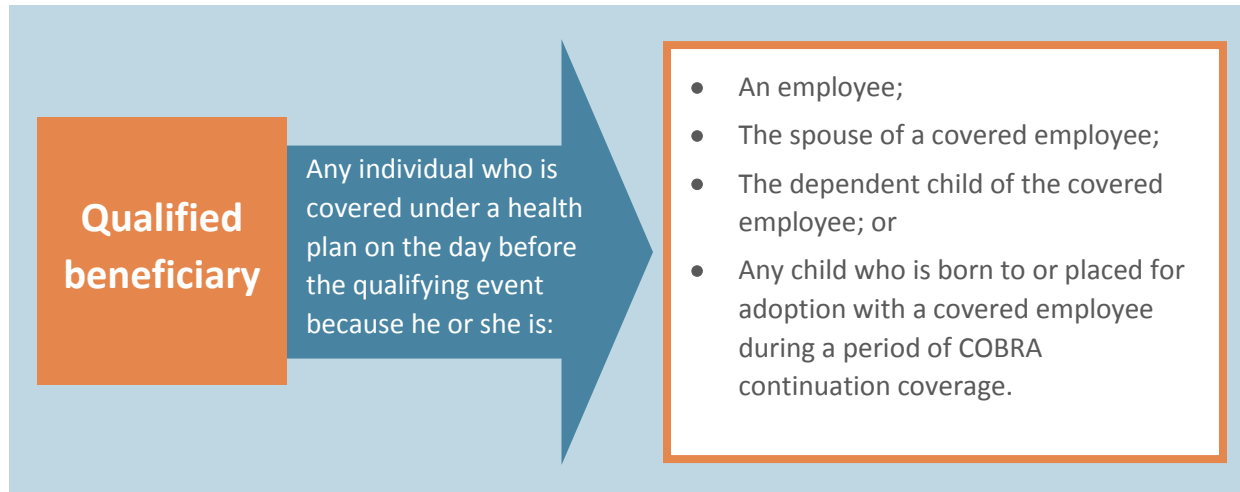
Plans Subject to COBRA

Almost all employers with group health plans must comply with COBRA, including corporations, partnerships and tax-exempt organizations.

There is a small employer exception to COBRA—an employer's group health plan is not subject to COBRA if the employer normally employed **fewer than 20 employees** during the preceding calendar year.

Qualified Beneficiaries

Under COBRA, a qualifying event triggers an obligation to offer COBRA coverage to **qualified beneficiaries**.



Each qualified beneficiary has an independent right to elect COBRA. For example, if an employee and his or her spouse were covered under the health plan on the day before the qualifying event, the spouse may elect COBRA even if the employee declines coverage.

Maximum Coverage Period

The period of COBRA coverage offered to qualifying beneficiaries is known as the “maximum coverage period.” The length of the maximum coverage period depends on the type of qualifying event that has occurred. It is:

- **18 months** for a termination of employment or reduction in hours; and
- **36 months** for all other qualifying events.

There are situations where the maximum coverage period can be extended (due to disability or a second qualifying event) or terminated early (for example, when COBRA premiums are not paid).

Qualifying Events

A qualifying event is any one of the seven specified events that occurs while a health plan is subject to COBRA and that results in a loss of coverage to a covered employee, covered spouse or a covered dependent child. There are some situations that are not considered qualifying events that require COBRA coverage to be offered.

Key Point

Not all losses of health plan coverage are caused by qualifying events.

For example, a cancellation of health plan coverage—whether at the employee’s request or because of the employee’s failure to pay premiums—is not, by itself, a qualifying event that triggers the requirement to offer COBRA coverage. Likewise, cancelling coverage for an ineligible individual who was mistakenly covered by the health plan is not a qualifying event for COBRA purposes.

To lose coverage means to cease to be covered under the same terms and conditions that were in effect immediately before the event. Often, there is a complete loss of coverage due to a qualifying event (for example, a complete loss of health plan coverage following an employee’s termination of employment). However, even a partial loss of coverage can trigger COBRA rights. For example, a loss of coverage includes an increase in employee premiums or contributions as a result of a qualifying event.

Key Point

If the event does not cause a loss of group health coverage, the employer is not required to offer COBRA coverage.

CHART OF QUALIFYING EVENTS

QUALIFYING EVENT	DESCRIPTION OF EVENT	QUALIFYING BENEFICIARIES	MAXIMUM COVERAGE PERIOD
Event 1: Termination of employment	<p>Termination of covered employee’s employment—whether voluntary or involuntary—for reasons other than gross misconduct</p> <p>Includes, for example, retirement, voluntary quitting, employer-initiated discharges, layoffs, strikes and lockouts</p> <p>COBRA does not include a definition for “gross misconduct.” It is clear, however, that a termination for gross misconduct is not the same as a “for cause” termination.</p>	Covered employee, spouse and dependent children	18 months
Event 2: Reduction of hours	<p>A reduction in hours of a covered employee’s employment</p> <p>This occurs when there is a decrease in the hours that a covered employee is required to work or that he or she actually works, but only if the decrease is not accompanied by an immediate termination</p>	Covered employee, spouse and dependent children	18 months

	<p>of employment.</p> <p>If group health plan eligibility depends on the number of hours worked in a given period (such as the preceding month or quarter) and the employee fails to work the required hours, this is a reduction of hours.</p> <p>Includes, for example, changing positions from full time to part time, a temporary layoff or furlough, or an absence from work due to disability or for any other reason (other than FMLA leave)</p>		
Event 3: Divorce or legal separation	<p>The divorce or legal separation of the covered employee from the covered employee's spouse</p> <p>Many health plans are designed so that a legal separation will not trigger a loss of coverage, and, thus, will not be a qualifying event.</p>	<p>Spouse and dependent children</p> <p>*Under most plans, a divorce or legal separation will not cause a dependent child to lose coverage.</p>	36 months
Event 4: Death of covered employee	<p>The death of a covered employee</p>	<p>Spouse and dependent children</p>	36 months
Event 5: Child's loss of dependent status under plan rules	<p>A covered employee's dependent child ceases to be a dependent under the plan's terms</p> <p>For example, a dependent child could lose coverage based on the plan's age limit for dependent children. Due to the Affordable Care Act's reforms, most health plans have an age limit of 26, although state insurance requirements in some states require dependent coverage beyond age 26.</p>	<p>Dependent child</p>	36 months
Event 6: Entitlement to Medicare benefits	<p>A covered employee becoming entitled to Medicare</p> <p>A covered employee is entitled to Medicare when he or she is eligible for</p>	<p>Spouse and dependent children</p>	36 months

	<p>Medicare and actually enrolled in the Medicare program.</p> <p>An employee’s Medicare entitlement will rarely cause a loss of coverage due to the Medicare secondary payer rules. Under the Medicare secondary payer rules, most group health plans are prohibited in most circumstances from making Medicare entitlement an event that causes a loss of coverage. However, Medicare entitlement may cause a loss of coverage for covered retirees.</p>		
<p>Event 7: Employer’s bankruptcy</p>	<p>An employer’s bankruptcy can be a qualifying event for covered retirees and their covered spouses and dependent children who lose health plan coverage in connection with an employer’s bankruptcy.</p> <p>Also, for employer bankruptcy, a loss of coverage includes a substantial elimination of coverage that occurs within the 12 months before or after the date on which bankruptcy proceedings begin.</p>	<p>Retiree, spouse and dependent child (if the employer or any member of its controlled group continue to offer a group health plan)</p>	<p>For covered retiree, date of retiree’s death</p> <p>For covered spouse and dependent child, 36 months after retiree’s death</p>