



Demystifying COBRA Compliance: How to Navigate the Law and Fill the Employee Health-Insurance Gap



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Introduction

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires businesses with 20 or more employees to offer COBRA continuation coverage under their current health insurance plan for designated periods. In addition, it directs various notifications that employers must provide to employees and their families every step of the way. State “Mini-Cobra” laws make the same requirement of smaller businesses (those with fewer than 20 employees) and vary state to state.

COBRA is an often unintentionally overlooked regulation that requires businesses to help fill the health insurance gap for employees who are between jobs or experiencing disruptive life events. As a business owner, it’s important to know which COBRA requirements apply to you because the costs of COBRA coverage noncompliance can be high.

In fact, the U.S. Department of Labor (DOL) can assess Employee Retirement Income Security Act (ERISA) fines of up to \$110 per qualified beneficiary, per day, for noncompliance. Employers may also be subject to COBRA excise taxes assessed by the Internal Revenue Service (IRS)—up to \$500,000—as well as damages and court fees that may be awarded to a plaintiff in the event of a lawsuit.

• **The good news? With the right help and a set of processes in place to stay current with federal and state laws, you can navigate COBRA compliance in a surprisingly smooth manner.**



3



Three key steps to help reduce your risk of COBRA noncompliance.

Note: Steps 2-3 specifically apply to federal COBRA requirements. State requirements may vary.

Find Out If Your Business Is Required to Offer COBRA Benefits



Most businesses that offer health insurance are also required to offer COBRA continuation coverage. That may come as a surprise to smaller business owners who are exempt from federal COBRA law and who may, depending on the state they do business in, have responsibilities under “mini-COBRA” legislation.



COBRA FEDERAL LAW

Your business must comply with federal COBRA regulations if you meet the following requirements:

- You are a private-sector company, or a state or local government agency.
- You employed at least 20 employees for more than 50% of typical business days in the previous calendar year.
- You sponsor a group health plan. Examples of health plans that may be subject to COBRA continued coverage include medical, dental, vision, and prescription-drug plans, health and flexible savings and reimbursement accounts (HSAs and FSAs), and alcohol- and drug-treatment programs. Examples of health plans that may NOT be subject to COBRA include accidental death and dismemberment plans, long- and short-term disability plans, and group term life insurance programs.

Both full- and part-time employees' hours are counted when determining whether a plan is subject to COBRA, according to the U.S. Department of Labor's Continuation of Health Coverage. For example, if a full-time employee works 40 hours per week, then two part-time employees working 20 hours per week are equivalent to one full-time employee.

If you fall under federal COBRA jurisdiction, you must offer employees and their families who lose health benefits the chance to continue their health coverage under certain conditions that are considered “qualifying events,” including:

- Voluntary or involuntary termination unless it's the result of gross misconduct
- Reduction in work hours
- Retirement
- Employer bankruptcy
- Reduction in staff, which puts the employer below the 20-employee benchmark
- An employee that switches coverage to Medicare
- Loss of dependent-child status (age 26)
- Divorce or legal separation
- Death

COBRA coverage can run for 18-36 months, depending on the type of qualifying event. You must offer the same healthcare plan, with the only difference being the price paid by the employee, which can be up to 102% of the healthcare plan's premium.

Most businesses that offer health insurance are also required to offer COBRA continuation coverage.

MINI-COBRA (STATE) LAWS

Even if you don't fall under federal COBRA requirements, your business may still be required to provide continuing healthcare coverage to eligible employees. More than 40 states, at last count, have stepped in to fill in the gap by adopting "Mini-COBRA" legislation that expands the coverage requirement to businesses with as few as two full-time employees.

According to the blog post, "Federal Small Employer Exemption Often Eliminated by State COBRA law," published by IRS-compliant document seller CORE Documents, Mini-COBRA laws vary from state to state with different election windows, notice requirements, and coverage eligibility categories.

"Keeping up with the different requirements by state can easily become confusing and overwhelming, especially with what seem to be constant changes and exceptions during the current pandemic," says Marci Freeman, G&A Partners Benefits Compliance Specialist. "In Minnesota, for example, employees who experience a qualifying event are able to continue their life insurance policies through state continuation. Even if they are part of a large group with health plans that fall under federal COBRA, it is important that they are also given the option to continue life insurance. Failure to do so may result in hefty fines."

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State continuation laws are based on the state in which their plans are domiciled. This is an important factor for companies with employees in multiple states, Freeman says. For example, if an employee lives in Nevada, which offers no state continuation benefits, but his or her health benefits are Arizona-based, that employee is still eligible for 18 months of medical, dental, and vision coverage according to Arizona state law.

Reach out to a team of HR compliance experts, like G&A Partners, to determine if federal or state COBRA requirements apply to your company. Your state department of insurance can also advise you about applicable Mini-COBRA laws.

Inform All Employees About Their COBRA Rights



If your business is required to offer healthcare continuation under federal law, ALL participants in your group health plan are entitled to COBRA coverage. According to federal COBRA law, your plan's "qualified beneficiaries" generally include your employees, their spouses, and dependent children. In some instances, retired employees (and their spouses/dependent children), and independent contractors and other agents may also be considered qualified beneficiaries, so it's important to carefully review and understand your plan's eligibility rules.



YOU ARE LEGALLY REQUIRED TO INFORM YOUR EMPLOYEES AND THEIR FAMILIES ABOUT THEIR COBRA RIGHTS IN THE FOLLOWING WAYS:

- Outline your employees' COBRA rights in your healthcare plan's Summary Plan Description (SPD), which is the document that explains the features and options included in your employee benefits plan. ERISA requires that each participant be provided an SPD copy within 90 days of joining the program.
- Provide each employee and spouse a general notice describing COBRA rights within their first 90 days of healthcare plan coverage. The Society for Human Resource Management (SHRM) recommends sending a letter by first-class mail to each covered employee's home address with the employee's name and the spouse's name or "and family" as applicable.

Many Mini-COBRA laws also require that you notify your employees of their COBRA rights.

Coordinate Employees' COBRA Coverage After Qualifying Events



If your company falls under federal COBRA purview, you are required to extend health insurance coverage to employees after a “qualifying event” that causes them to lose health insurance coverage.



WHAT IS A QUALIFYING EVENT?

The U.S. Department of Labor defines COBRA qualifying events for covered employees as:

- Termination of the employee’s employment for any reason other than gross misconduct; or
- Reduction in the number of hours of employment.

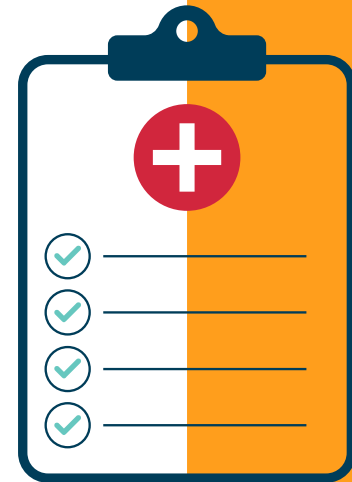
Qualifying events for the spouse and dependent child of a covered employee include:

- Termination of the covered employee’s employment for any reason other than gross misconduct
- Reduction in the hours worked by the covered employee
- Employee becomes entitled to Medicare
- Divorce or legal separation of the spouse from the covered employee
- Death of the covered employee
- Loss of dependent-child status under the plan rules (age 26)

YOUR COMPANY'S NOTIFICATION REQUIREMENTS

It is your company's responsibility to provide your employees and their family members the following notifications after a qualifying event:

- **Employer's Notice of Qualifying Event:** In the case of certain qualifying events, including the death of an employee, a reduction in hours, and Medicare entitlement, you are responsible for notifying the plan administrator that a qualifying event has occurred within 14 days of the event or loss of coverage, whichever is later. This notice is not required if you are the plan administrator.
- **Election Notice:** This notice provides your COBRA-eligible employees and their insured family members the terms and amount of the premium payment, and the beginning and ending dates of coverage. It must be delivered within 14 days after the plan administrator is notified of the qualifying event. If you are the plan administrator, this notice must be sent within 44 days of the qualifying event or loss of coverage, whichever is later.
- **Notice of Unavailability:** If an individual gives notice regarding a qualifying event but is not entitled to receive COBRA coverage, the plan administrator must notify the individual with information on why coverage is not available. It must be delivered within 14 days after the plan administrator is notified of the qualifying event. If you are the plan administrator, this notice must be sent within 44 days of the qualifying event or loss of coverage, whichever is later.
- **Notice of Early Termination:** If COBRA coverage will end or has ended early (before the end of the maximum coverage period), qualified beneficiaries must be notified that coverage will be or has been terminated. According to the U.S. Department of Labor, a group health plan may terminate coverage for the following reasons:
 - Premiums are not paid in full on a timely basis.
 - The employer ends participation in the group health plan.
 - A qualified beneficiary begins coverage under another group health plan after electing continuation coverage.
 - A qualified beneficiary becomes entitled to Medicare benefits.
 - A qualified beneficiary engages in conduct that would justify terminating coverage, such as fraud.



Employers are required to notify qualified beneficiaries about the premium assistance program and provide information about their rights under the ARPA. Refer to the Department of Labor's COBRA Premium Subsidy webpage for more details on the ARPA's premium assistance requirements and model notices you can use to communicate with your employees and remain in compliance.

- **The ARPA subsidies have been a huge blessing to many over the last few months but being able to adapt so quickly was a challenge for employers," Freeman says. "When the (ARPA) legislation was released, it left little time for required notices to be sent out and system updates to be created to ensure each step of the process was properly documented and carried out. At G&A, we were able to take the burden of keeping up with these changes off our clients to ensure they remained compliant. With fines of up to \$200 per day just for failing to send out the required notice, this was a huge relief for them.**



About G&A

G&A's team of benefits experts can help manage your organization's COBRA details—from initial enrollment, through status and life-event changes, to termination of coverage—ensuring you remain in compliance with all federal and state regulations. For more information on how outsourcing your HR to G&A can help you reduce your risk and get time back to grow your business, contact one of our trusted business advisors.

