

COBRA Part 1 Q&A – the following questions were asked during the two webinar sessions in (June, 2018)

NOTE:

- Slides are found on the EBCflex.com website under Education/webinars. Scroll to the desired webinar. Handouts.
- The audio cannot be utilized through your computer, you must dial in to the phone number and then use the access code provided on your invitation for all our webinars.
- These webinars will not be discussing state continuation on any level.
- EBC does not have COBRA notices available online. The DOL of website is a good place to search for such notices, though the selection is still limited. Also, check your local SHRM chapter.

Q: If an employer is using EBC for COBRA, what are the employer's responsibilities related to COBRA?

A: You must notify us of individual enrollees to whom an initial notice must be sent (if you have hired this service), qualifying events that require an election notice, keep us up to date on any carrier changes you might have, premium increases that occur, secondary events you been made aware of. The employer is also responsible for terming employees/dependents from active coverage following a QE (we work with the carriers only from the time a QB elects COBRA through when they term from COBRA.)

Q: Does EBC have a COBRA Continuation Coverage Election Notice template to use?

A: EBC does not have one to disseminate, however there are some good sources for notice templates. The DOL (Department of Labor) and SHRM are two.

Q: Do initial COBRA notices need to be sent out each plan year or just when they first come on the plans?

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A: Initial notices need not be sent each plan year. The initial notice need only be sent out once; when the employee elects benefits subject to COBRA. Additionally, if an employee adds family members, those new members must be noticed.

Q: Who or what is SPD?

A: Summary Plan Description. The SPD is the employee facing document which describes a benefit for the employee in layman's language. This is defined and mandated by ERISA.

Q: If an employee was not yet eligible for coverage, and abruptly resigns before his election of coverage, do we need to send a notice of unavailability?

A: No, as they were never covered under any of the benefits.

Q: If an employee was not under or eligible for the company plan and was terminated, do we need to provide any notice as the employee?

A: Same as above.

Q: Is retirement a qualifying event?

A: Yes it is. Retirement is an 18 month event for the employee. This would be considered voluntary termination. Even if the employee has told you that they are going to enroll in Medicare, they must be sent the election notice.

Q: You were speaking about Medicare and the Notice of Unavailability. Would the notice be required within 14 days of the employee expressing their intent to take Medicare?

A: Per the above question, COBRA is offered to a retiree regardless of their intent to enroll in Medicare. If the individual enrolls in Medicare prior to electing COBRA, they may have dual coverage. COBRA would pay secondary.

Q: Can we ask COBRA questions of EBC even if we do not subscribe to COBRAsecure?

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A: If you are a current client of EBC with a Cafeteria Plan, HRA or HSA, we gladly answer questions concerning COBRA as they are often times interrelated. As a general principal we may answer straightforward questions from prospective clients, and often do so through their brokers.

Q: What if we also offer our employee's travel insurance (medical) and the employee is terminated do we offer COBRA to them as well? (This insurance is only used for under one year employment overseas.)

A: Generally travel insurance is not considered major medical health insurance, so is not a COBRA-able benefit. However, it is best that when you have questions regarding ANY specific coverage type you inquire with your broker or your insurance carrier. EBC cannot make this determination for you as we do not have details about the coverage.

Q: What if an employer is offering a severance package? Does the 18 months start from employment termination date or when the severance ends?

A: This depends on how the employer has set the up the severance package. Most employers start COBRA the day after termination OR the first of the month following termination. If a severance package is offered, the employer simply pays for the COBRA premiums until the end of the agreement, whereupon the employee assumes the responsibility of paying the COBRA premiums.

Some employers elect to postpone COBRA until the severance package has ended. We encourage employers to not postpone COBRA. If COBRA is postponed, and for a period after termination the employer continues to pay the employer contribution to the health insurance as if the employee were an active employee, COBRA would start after the postponement. Caution: this approach needs to be relayed to the insurance carriers and they need to agree to what amounts to the extension of time on COBRA.

Part III will delve into retirement/Medicare and COBRA.

Q: Are there options to notify EBC of qualifying events?

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A: Employers use the COBRA Secure Qualifying Event Form to notify EBC of an individual's employment status. The form includes all the details required to get the process moving for the Qualified Beneficiary.

Q: Who sends out the notice?

A: In all cases, if the employer has not employed the services of a TPA, attorney, or other professional resource, the employer is obligated to sending ALL notices. If the employer has hired a TPA, more frequently than not, the TPA sends the notices on the employer's behalf.

Q: If an employee is eligible for benefits, but they choose not to enroll, do we still have to send an initial letter?

A: Only enrollees need to be sent the initial notice. The Initial Notice must be sent out within 90 days of an employee becoming covered by your group health plan or any time an employee adds a spouse or dependent.

Q: Regarding the initial COBRA notice, do I have to mail it or can I give it to them as I meet with them when we first meet?

A: The Initial Notice must be mailed using at least first class mail. It must be addressed to the employee, spouse or any other dependents. If a spouse or dependents reside at a different address, additional mailings must be sent to them. Copies of each employee's *Initial Notice* and any associated receipts of mailing must be kept on file to document that the notices were sent and for the purposes of a DOL audit.

That goes for all notices. It is in your best interest to have a "paper trail".

Q: If a child qualified for COBRA due to ceasing to be a dependent (ages off) and during that 36 months the employee becomes entitled to Medicare, does that count as a secondary event for the dependent? And should we extend the child's COBRA coverage length of term?

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A: No it does not. The child, if they elected COBRA, is already on a 36 month COBRA term. Multiple events which could extend COBRA to 36 months are death, divorce, loss of dependent status.

Q: If an employee gets a divorce and their spouse was covered under their employer group health plan as a dependent, would they be a separate QB even though they were not the primary insurance holder?

A: If a divorce occurs, and the ex-spouse was a covered individual under the employee's plan, the divorcing spouse receives a 36 month COBRA offer.

All individuals covered as insureds, when electing COBRA, are determined to be separate QBs, each having independent COBRA rights.

Q: If an employer hires a third party to administer COBRA, who is then the Plan Administrator?

A: The employer remains the Plan Administrator. COBRA is an employer law, so therefore the employer remains legally responsible. The TPA acts on behalf of the employer, not in the stead of the employer.

Q: If an employer files bankruptcy and the group (health insurance) is cancelled, will employees have a COBRA option? I thought the ER had to have group insurance in force for terminating employees to get COBRA?

A: This is true; COBRA must have a plan upon which to base the offer. If a plan ceases to exist, there is no plan to offer.

Q: Is there a model template form available to be used when there is QE where there is no potential for COBRA that can be used.

A: That is the Notice of Unavailability. I would try your local SHRM organization, or an ERISA attorney.

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Q: Do employees have to notify the employer in writing about changes or can they do it verbally?

A: An employee may notice the Employer or Plan Administrator verbally that they have a potential qualifying event (ie. divorce, birth of a child, adoption). They still must do so within 60 days of the event.

Q: We hire a 3rd party to send notices and such, should we be getting copies of the notices?

A: It is not necessary to get a copy of each notice, however the TPA should be required to track the notices and provide a reliable resource to retrieve the notice should it be needed.

Q: If an employee is out on an unpaid leave and they decide to not pay the employer to maintain their health insurance premiums current, the employer terms insurance- is this a COBRA qualifying event?

A: If an employee is on unpaid leave, the answer depends on whether or not they lose eligibility for the benefits, and when that loss occurs. It is best, when faced with an employee taking a leave, to offer COBRA as the result of reduction of hours when the employee exits, even if the employer is supplementing the premiums (paying the employer share and requiring the employee also remit payment for their portion).

Q: If an employee gets married, the employer/administrator is required to send an Initial Notice to the spouse?

A: Yes.

Q: Age off? So if one of my employees has a child that turns 26 years old, should I be notifying EBC that we have a qualifying event?

A: Yes. The individual needs to be offered COBRA. Please use the Qualifying Event Form provided on your employer portal.

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Q: Do I need to enter a new hire for all employees eligible for benefits in EBC? Do I need to add "New Hires" into EBC if they waived all benefits?

A: EBC asks COBRASecure clients to provide us the names of all eligible employees, even if they are waiving benefits. And, we ask that you provide us all NPMs (new plan members) as they elect benefits subject to COBRA. If you have further questions on how your COBRASecure plan is set up for billing purposes and notice purposes, please contact your CSC.

Q: Does EBC send out the general notice letters to my employees?

A: If a client includes this service in their Service Agreement with EBC, EBC will send out the initial notices to employees and their dependents. Our Initial Notice has been reviewed by our benefits attorney and is updated with revised COBRA language as it becomes available or as necessary. We maintain complete documentation and a document archive.

Q: For the initial notice that we must mail out, can you reiterate who must receive it? Would we send out the initial notice to each covered child of an employee?

A: The notice must be sent to all individuals enrolled in any benefits which are considered COBRA eligible.

The Initial Notice may read John and Jane Doe and dependents. You are not required to notice each individual child.

Q: When keeping a copy of the election notice, can this be an electronic copy or does it have to be a hardcopy?

A: Notices, like many other types of documents, may be stored electronically.

Q: If an employee terminates, elects COBRA and while on COBRA gets divorced, and does not let the employer know, where does the burden lie?

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A: The employee has an obligation to let the employer know of life events that could change their coverage (divorce, birth, aging off of child etc). They have 60 within which to do so. If they do not, in this case, tell you of the divorce, the divorced spouse does not get an extension of coverage.

Q: If an employee tells their manager of a qualifying event (marriage/divorce), is that "telling the employer"? Or do they have to tell the plan admin?

A: Yes, that is telling the employer. This is a good opportunity to educate your management to what their responsibilities are in regards to COBRA.

Q: Voluntary drop in coverage, does this count as a COBRA event?

A: No. As an example, an employee voluntarily dropping the group health because it is too expensive, and they wish to enter the Marketplace, is not considered a COBRA qualifying event for the spouse or dependents. They would not be offered COBRA.

Q: What if someone is eligible for Medicare, but chooses to stay on our group health plan. When does the COBRA notice go out?

A: If you have active employees that are eligible for Medicare, the group health plan **MUST CONTINUE** to cover those employees due to MSP (Medicare Secondary Payer Rules). Regardless of the employee's decision, Medicare will pay secondary to group health.

If the question is covering retirees on your active employee plan, as long as you continue to pay the same amount of their premium as you did prior to them retiring, you may postpone the offer of COBRA. If you do not pay their premium as you would an active employee, the COBRA notice should have gone out when you no longer subsidized their premium. That is likely the date of retirement.

Tune in for Part III which covers Medicare and COBRA.

Q: Regarding the "Triggering a COBRA Obligation" QE. Does the same rule apply for Retiree's death as Employee's death?

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A: This is a complex area. And I'm not certain what the question is so I hesitate to answer. We are doing Part III in August which will go through many different ways of looking at COBRA, Medicare, Retiree plans and how they affect the spouse. It would be a good idea to tune in to that session. If you have a question that you can pose to your CSC here at EBC that is specific to this situation, please do so and we will get it answered for you.

Q: You mention a COBRA participant could make changes during open enrollment. If a person terminates in the middle of the year, will this serve as a QE and can they change to a HMO to a PPO (or only during open enrollment?)

A: Voluntary termination is cause for offering COBRA. The offer of COBRA is always the benefits that the employee had the day before termination. The only time they may change the benefits they had is at open enrollment. The changes one may make at open enrollment are things such as HMO to PPO, picking up the dental, going from single to family.

If an employee is offered family coverage at the onset of COBRA and the employee determines to waive the COBRA but another family member decides to elect, this could change the configuration of the premium. But, that is the premium on the original insurance product.

Q: A teacher terminates employment 6/1/2017 but has coverage through 8/31. What is the qualifying event date? What is loss of coverage date? What is the deadline for the Qualifying Election Notice?

A: The QE date is 6/1/2018 however the loss of coverage date is 9/1. The election notice must be sent out within 44 days of the qualifying event date, on or before 7/14. There is no distinction for classes of employees. The election notice deadline is always 44 days from the qualifying event date.

Q: Do open enrollment packets need to be sent to those who did not initially sign up for COBRA?

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A: If you have individuals who have declined COBRA they need not be sent open enrollment packets.

Q: We have an HRA and FSA available to current employees is there a cheat sheet available that would tell us whether we need to offer COBRA or not?

A: EBC does not have a “cheat sheet” available. A rule of thumb: Both the HRA and the FSA are benefits upon which you must offer COBRA when they are not overspent. The HRA, when integrated with the medical, must be offered “with” the medical, not as a standalone product for the same term as the medical. The HRA, when not integrated must be offered as such for COBRA purposes for the full 18 months. The FSA is offered until the end of the year for excepted FSA, and a full 18 months for non-excepted FSA.

If you are an EBC client, you have access to the calculator that can help you determine if the FSA is overspent. You also have access to your CSC, who can help you with this question.

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