

COBRA Foundations: Building **Blocks to Compliance Q&A** – the following questions were asked during the two webinar sessions in April 2019

### **General Presentation Questions**

Q: Can the slides be downloaded?

A: You can get a copy of the slide handouts on the webinar page at:  
<http://www.ebcflex.com/Education/Webinars.aspx>

**Q: Will this presentation be eligible for CE credits toward PHR/SPHR, SHRM or HCRIS?**

A: This webinar was not submitted for approval for outside association CE credits. We can however, upon request provide a certificate of attendance in order for you to pursue the CE credit on your own.

### **Initial Notice**

**Q: Should all employees be given an initial notice or just employees who are eligible for insurance benefits?**

A: The regulations dictate that each covered employee and spouse be provided with an initial notice. You would not be required to provide the notice to individuals ineligible for benefits or to individuals who waive the option to enroll in COBRA eligible benefits. Some employers choose to provide the initial notice to all eligible to help be sure they do not miss anyone upon enrollment.

### **Notice of Qualifying Event/Election Notice**

**Q: If a former employee does not elect any COBRA eligible benefits, do they need a COBRA letter when they leave?**

A: If an employee is not enrolled in any COBRA eligible benefits immediately prior to their termination, they would not be eligible for COBRA, therefore would not need to receive any notices.

*The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.*



1350 Deming Way, Suite 300  
Middleton, WI 53562-4640  
P: 800 346 2126 | 608 831 8445  
F: 608 831 4790  
An employee-owned company  
[www.ebcflex.com](http://www.ebcflex.com)

**Q: Once a QB elects COBRA coverage, how long does it take for Employee Benefits Corporation to notify carriers?**

A: Once Employee Benefits Corporation receives notification of a COBRA election, we process the information internally the same day. Enrollment notification is sent the next business day to the contact designated by the group set-up (this could be the carrier, employer or broker).

**Q: When there is a COBRA triggering event, and the employee is enrolled in employee/dependent coverage prior to the event, do I offer family coverage with COBRA?**

A: The offer of COBRA should go to all who are enrolled in coverage prior to the COBRA qualifying event. If you have employee, spouse, 1 child (family coverage) prior to a termination, you would offer the same family coverage for the same individuals through COBRA. The family would have the right to only elect COBRA for all of these individuals, or just some of them.

### **Identifying Plans which are Subject to COBRA**

**Q: Can you review how to identify if a Health Care FSA must be offered through COBRA?**

A: The offer of COBRA for a Health Care FSA is determined on an individual basis.

For a Health Care FSA that is a non-excepted benefit you must offer COBRA if the account is overspent or underspent and would use the maximum coverage periods like a group health plan and offer COBRA for 18, 29, or 36 months depending upon the circumstances. A Health Care FSA is an excepted benefit if employees are eligible for other employer sponsored group health insurance and if there are any employer contributions to the Health Care FSA, it is less than \$500 or if greater, the contributions are matching contributions.

For a Health Care FSA that is an excepted benefit, you must offer COBRA if the Health Care FSA is **not overspent** for the remainder of the plan year in which the individual was a participant. In order to determine if you an FSA is overspent, you look at what remaining benefit an individual could receive from their FSA vs. what they would have to pay to have that benefit.

Let's take a look at an example with some variables. For this, I will assume a calendar year plan and a participant who elected \$1,200 (or \$100/month) and a termination date of 7/31/2019. (Based on that, they would have paid in \$700 to the FSA.) If the participant would elect COBRA, they would have to pay \$102/month (assuming that the 2% admin fee is charged) for a total of \$510. From

*The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.*



1350 Deming Way, Suite 300  
Middleton, WI 53562-4640  
P: 800 346 2126 | 608 831 8445  
F: 608 831 4790  
An employee-owned company  
[www.ebcflex.com](http://www.ebcflex.com)

here, we look at how much reimbursement they would be eligible for based on their election, any applicable rollover dollars, and what they have been reimbursed year to date.

Below is a table with some various account balances and if it would be considered overspent or underspent:

No rollover, \$500 reimbursed prior to termination	\$1,200 election <u>- \$500 reimbursement</u> \$ 700 remaining available	\$700 available is more than the \$510 they would be billed.	Underspent. COBRA obligation exists.
No rollover, \$690 reimbursed prior to termination	\$1,200 election <u>- \$690 reimbursement</u> \$ 510 remaining available	\$510 available is equal to the \$510 they would be billed.	Overspent. No COBRA obligation unless non-excepted Health Care FSA.
<i>This is a special case in which it is not either over or under spent – however, is treated as if it is overspent.</i>			
No rollover, \$750 reimbursed prior to termination	\$1,200 election <u>- \$750 reimbursement</u> \$ 450 remaining available	\$450 available is less than the \$510 that would be billed.	Overspent. No COBRA obligation, unless non-excepted Health Care FSA.
\$300 rollover from prior year; \$500 reimbursed prior to termination	\$1,200 election + \$300 rollover <u>- \$500 reimbursement</u> \$1,000 remaining available	\$1,000 available is more than the \$510 they would be billed.	Underspent. COBRA obligation exists.
<i>NOTE: You are not billed for rollover as you made those contributions in a prior year.</i>			
\$300 rollover from prior year; \$990 reimbursed prior to termination	\$1,200 election + \$300 rollover <u>- \$990 reimbursement</u> \$ 510 remaining available	\$510 available is more than the \$510 they would be billed.	Overspent. No COBRA obligation, unless non-excepted Health Care FSA.
\$300 rollover from prior year; \$1,000 reimbursed prior to termination	\$1,200 election + \$300 rollover <u>-\$1,000 reimbursement</u> \$ 500 remaining available	\$500 available is more than the \$510 they would be billed.	Overspent. No COBRA obligation, unless non-excepted Health Care FSA.

*The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.*



1350 Deming Way, Suite 300  
Middleton, WI 53562-4640  
P: 800 346 2126 | 608 831 8445  
F: 608 831 4790  
An employee-owned company  
[www.ebcflex.com](http://www.ebcflex.com)

**Q: Can you confirm if VOLUNTARY Group Accident/Critical illness plans are protected by COBRA, or is COBRA only offered if the benefit is paid by the employer (non-contributory)?**

A: This will depend on your contract. If your voluntary benefits are issued under a group contract, even if employees pay 100% of the premium, they would be subject to COBRA. If the contracts are set-up as individual contracts, the employer should review with the carrier to see if they are set-up as ERISA plans. In addition, the employer should review the Department of Labor safe harbor rules ([DOL Reg. §2510.3-1\(j\)](#), [DOL Advisory Opinion 94-23A](#)) to determine if they have crossed the line and inadvertently created an employer sponsored plan by being too involved in the coverage. If they are, they would again be subject to COBRA. Most often, individual contracts are not set-up as ERISA plans, therefore, would not be subject to COBRA.

### **Other Notice & Timing Questions**

**Q: Does the additional 30-day premium grace period apply to COBRA administered by a TPA?**

A: Based on your question, I am assuming that the 30-day grace period you are referring to is the grace period for participants to make their monthly payments on an on-going basis. If that is accurate, then yes. Even if COBRA is being administered by a TPA, all COBRA qualified beneficiaries would be given a 30-day grace period in which to make their monthly payments. This grace period applies to all installment payments after the initial election payment is made.

**Q: How many days do you have to provide the Summary Plan Description and Summary of Benefits Coverage to the QB once they elect to take COBRA?**

A: The **Summary Plan Description (SPD)** must be distributed to plan participants (including active and COBRA) based on the following times:

- **Existing Employees:** For new plans, the plan administrator must automatically furnish an SPD to covered participants within 120 days after the plan first becomes subject to ERISA.
- **New Hires:** For a participant newly covered under an existing plan, an SPD must be automatically furnished within 90 days after the participant first becomes covered under the plan.
- If no material changes were made over 10 years, a copy of the most recently distributed SPD must be furnished by the plan administrator within 210 days following the last day of the tenth plan year.

*The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.*



1350 Deming Way, Suite 300  
Middleton, WI 53562-4640  
P: 800 346 2126 | 608 831 8445  
F: 608 831 4790  
An employee-owned company  
[www.ebcflex.com](http://www.ebcflex.com)

- **Plan Amendments:** For material reductions, the plan administrator must provide either an updated SPD or a Summary of Material Modifications (SMM) to communicate material changes within 60 days. The SMM can also be used to communicate other material changes as well.
- In addition, a plan administrator must automatically furnish an updated SPD at least every five years (no later than 210 days following the last day of the fifth plan year) if there have been any material changes made within that five-year period.
- **Upon Request:** An employer must provide a copy of the SPD within 30 days of a request from a participant. Failure to do so may result in a penalty of \$110 per day per refusal or failure.

So, for many COBRA participants, they may have already received their SPD prior to enrolling through COBRA. The same rules would apply in regard to having to provide updates to them as it would to active employees. There is no rule that this document is provided again when someone first enrolls in COBRA if they already received the document as an active participant. It must continue to be provided in the future as required based on above.

The **Summary of Benefits and Coverage (SBC)** must be distributed to plan participants (including active and COBRA) based on the following times:

- **At Open Enrollment (Renewal)** - the SBC must be included in open enrollment material. If the renewal is automatic, the SBC must be distributed no later than 30 days prior to the first day of the new plan year. If the new policy has not been issued by 30 days prior to renewal, the SBC must be provided as soon as practical - but no later than 7 business days after the policy has been issued.
- **At Initial Enrollment:** The SBC for each eligible plan must be provided as part of any written application materials that are distributed by the plan.
- **For Mid-Year Enrollment:** The SBC must be provided within 90 days after enrollment.
- **Upon Request:** As soon as practical, but no later than 7 business days following the request.

Again, this applies the same for active and COBRA participants. There is not a requirement to provide again when someone first enrolls in COBRA if they already received the document as an active participant. It must continue to be provided in the future as required based on above.

*The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.*



1350 Deming Way, Suite 300  
Middleton, WI 53562-4640  
P: 800 346 2126 | 608 831 8445  
F: 608 831 4790  
An employee-owned company  
[www.ebcflex.com](http://www.ebcflex.com)

**COBRA and Medicare**

**Q: I have an active employee who turns 65 in July and has family coverage group health plan. He is retiring on 12/31/19. He is intending at that time to do Medicare only, no COBRA. His wife however will want COBRA. If I send out COBRA notices to both, she could elect single COBRA coverage for herself, correct? Would she be eligible for 18 months or 36 months of COBRA?**

A: There are a few things to be cautious of in this specific question. First, even though the employee has turned 65, he may or may not have enrolled in Medicare. This will make a difference when it comes to the offer of COBRA. If the employee is Medicare entitled before his retirement of 12/31/2019, you would want to extend an 18-month COBRA offer to him based on the retirement. In addition, you would want to extend a COBRA offer with a maximum coverage period of 36 months from the employee's Medicare entitlement (enrollment).

**Q: Our health insurance SPD specifically says they can only stay on our health insurance (after they leave) if they are under age 65 or Medicare eligible. Do we still need to offer COBRA in the Roy example?**

A: COBRA regulations would trump any Summary Plan Descriptions. You have an obligation to offer COBRA to anyone who is Medicare entitled prior to termination as well as anyone under or over 65, who has not enrolled in Medicare. So unless you have a retiree plan that is an alternative to COBRA, it would seem that the COBRA rules would be required.

**Q: Please review when a person who is eligible for Medicare, is not eligible for COBRA.**

A: Most often Medicare entitlement (enrollment) that occurs when someone is actively employed and enrolled on an employer sponsored health plan **does not** cause a loss of eligibility for coverage.

If the employee enrolls in Medicare 1<sup>st</sup> and then retires (terminates or reduces hours), the employee is offered 18 months of COBRA and the spouse and dependents will be offered the longer of:

- 36 months of COBRA from the Medicare entitlement (enrollment) date
- 18 months of COBRA from the retirement date

If the employee enrolls in Medicare after he/she is enrolled in COBRA, the individual loses COBRA coverage and the spouse and dependent can remain on the COBRA coverage through the remainder of the 18 months.

*The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.*



1350 Deming Way, Suite 300  
Middleton, WI 53562-4640  
P: 800 346 2126 | 608 831 8445  
F: 608 831 4790  
An employee-owned company  
[www.ebcflex.com](http://www.ebcflex.com)

**Leave of Absence and COBRA**

**Q: If an employee is still on the roster with a Leave of Absence or disability, at what point does a company put them on COBRA.**

A: This will depend if the leave of absence is an FMLA leave, a paid non-FMLA (personal) leave, or an unpaid non-FMLA leave.

Under FMLA, the qualifying event takes place when the employee fails to return from the FMLA leave. There are two ways in which this can occur: (1) the individual terminates employment or (2) their leave exceeds the maximum FMLA period. If the individual exceeds the maximum FMLA period, it will result in a secondary personal leave which is discussed in more detail below.

If an employee is on a paid personal leave, such as using Sick/Vacation/Paid Time Off the date of the loss of eligibility would be delayed until their paid leave is exhausted.

If the employee is on an unpaid non-FMLA (personal) leave, the qualifying event will occur when the employee loses eligibility for coverage which in most cases will be when the employee is no longer actively working. Ultimately, the date that the employee loses eligibility for coverage will be determined by the employer's leave of absence policies. If an employer has a defined leave of absence policy that extends benefits eligibility for a designated amount of time, the loss of eligibility would be at the conclusion of the time defined in the policy. In the absence of a policy, the eligibility would be lost upon the commencement of the leave.

**Q: If an employee goes on a Leave of Absence to visit family for two months, are they eligible for COBRA?**

A: This will depend on your specific company's Leave of Absence Policies. If during a two month personal leave, an employee loses benefits eligibility, yes, you would want to extend the offer of COBRA. If your leave policies allow for a personal leave of this amount of time in which the individual remains benefits eligible, they would not lose eligibility and they could remain on the active plan. (Please be sure any insurance carriers have reviewed and are able to follow this leave policy.)

*The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.*



1350 Deming Way, Suite 300  
Middleton, WI 53562-4640  
P: 800 346 2126 | 608 831 8445  
F: 608 831 4790  
An employee-owned company  
[www.ebcflex.com](http://www.ebcflex.com)

### **Going above and beyond COBRA Regulations**

**Q: Can you elect to pay COBRA premiums for some individuals and not others? For example, could an employer pay when someone is out on a leave for an injury/illness, and not for others who were terminated?**

A: Yes, however it is best practice for an employer to have a policy that defines how they make this determination and follow their policy consistently. For example: We will cover one month of COBRA premium per completed year of service (after 5 years) prior to termination. This policy only applies to involuntary terminations or reduction in hours. In the case of a leave versus a termination, yes, but again, it would be best if they document the policy and remain consistent (cover all employees on an injury/illness leave for x amount of time).

**Q: Doesn't the insurance carrier have some say in whether you offer "more" than what is required, such as for domestic partner?**

A: Yes! Anytime you wish to offer more than what the COBRA regulations include, be sure to review your intent with all of your carriers (including stop-loss carriers) to ensure it is allowed under your contract. The carrier may not agree to the additional coverage you wish to offer.

### **Other Questions**

**Q: If a company is ending business and benefits will end, does COBRA need to be an option via the insurance vendor?**

A: Generally, if there is no plan, there is no COBRA. The insurance carrier would not extend COBRA, however they may offer conversion plans to the former plan participants. If a business is terminating their plan – the COBRA obligation would also end. This could be for a variety of reasons, including closing the business. In the case of one business being purchased by another, the COBRA obligation sometimes will shift to the company purchasing the other.

**Q: Can you confirm that a COBRA participant that elects only COBRA dental, but not medical, can they elect medical through COBRA during Open Enrollment?**

A: Correct, at your company's annual open enrollment period all enrolled and pending COBRA qualified beneficiaries have the same rights as your active employees. This would include adding a benefit line that they did not previously have, or making enrolment changes (who is covered on their plans).

*The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.*



1350 Deming Way, Suite 300  
Middleton, WI 53562-4640  
P: 800 346 2126 | 608 831 8445  
F: 608 831 4790  
An employee-owned company  
[www.ebcflex.com](http://www.ebcflex.com)

**Q: What if an employee voluntarily terminates their coverage BEFORE they terminate employment - doesn't the employer have to offer COBRA because of section 125 allowing pre-tax contributions?**

A: The only time that an employee can voluntarily terminate plans under Section 125 is at open enrollment. If someone waives coverage at open enrollment and then terminates employment, they would not have to receive an offer of COBRA. The only exception to this is if the termination of COBRA was for a spouse in anticipation of a divorce. In this case, as long as the employer is notified within 60 days of the divorce, the COBRA offer is required for the spouse who was dropped from coverage in anticipation of the divorce even though he/she was not on the health plan the day before the divorce under these circumstances.

**Q: Are employee children allowed to stay on insurance through age 26? Off once they are 27**

A: My extreme apologies! This was an error in the slide deck. Per ACA, adult dependents are allowed to remain on benefits through age 25, off at 26 for group health insurance purposes. Some carriers will stop coverage on their birthdate, others might continue through the end of the month. You should check your specific insurance contracts to see how this applies to you. For Health Care FSA or Health Reimbursement Arrangements however, adult children can remain covered through the end of the calendar year in which they turn 26 for tax free reimbursement purposes.

### **COBRA and State Continuation**

**Q: What difference might exist for Notice Requirements for State Continuation versus COBRA?**

A: This will vary state by state. Please review your state's continuation regulations to determine what would be required.

**Q: Is COBRA required for Domestic Partners under Federal law if Domestic Partners are recognized under state law?**

A: Because the federal law does not include domestic partners in the definition of a spouse, COBRA is not required to be extended at any time to these individuals. The only exception is if the domestic partner meets the definition of a qualifying relative. (In order to be a qualifying relative, an individual must pass a relationship test, support test, and not a qualifying child test.)

If you are in a state in which domestic partners are recognized, it is advisable to review your state continuation laws to see if any are applicable to domestic partners or if your insurance contract contains any continuation provisions.

*The material provided in this Q&A is by Employee Benefits Corporation and is for general information purposes only. The information does not constitute legal advice and may not be relied upon by anyone as such.*



1350 Deming Way, Suite 300  
Middleton, WI 53562-4640  
P: 800 346 2126 | 608 831 8445  
F: 608 831 4790  
An employee-owned company  
[www.ebcflex.com](http://www.ebcflex.com)