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Confused about COBRA?: Understanding Federal and State Continuation of Health Insurance Coverage

By Edie Lindsay, Troutman Sanders

This article provides a brief overview of the federal and Georgia laws that allow employees to extend their health insurance coverage upon termination of employment. Additional federal laws provide for temporary extensions of coverage during periods of military or family and medical leaves of absence, but these are beyond the scope of this article.

I. Under Federal law

The federal law known as COBRA permits employees and dependents to continue their coverage under an employer's group medical, dental, vision and other health plans when coverage would otherwise terminate due to these qualifying events:

- The employee's termination of employment (other than for gross misconduct)
- A reduction in the employee's hours of work that makes him ineligible for coverage
- The employee's death, divorce or, in limited circumstances, eligibility for Medicare. These events permit dependents to elect COBRA, but not the employee.
- Loss of dependent eligibility. This gives the dependent the right to elect COBRA, but not other family members.

The COBRA continuation rules apply equally to both insured and self-funded employer plans, but the employer's responsibilities will differ somewhat depending on the nature of the plan. This article addresses the application of COBRA to insured plans.

Which employers are subject to the COBRA rules?

Subject to certain limited exceptions, an employer who has 20 or more employees is subject to COBRA. In determining whether the employer meets this threshold, the employer must count part-time employees to determine "full time equivalent" employees, and it must count all employees of any affiliated employers that are in the same control group under federal tax laws. Employers who do not meet the 20-employee threshold are not subject to federal COBRA, but will be subject to the Georgia coverage continuation rules described in Section II.

Which employees are eligible for COBRA?

Any employee or independent contractor who loses health plan coverage due to termination of employment (whether voluntary or involuntary) or a reduction in work hours is eligible for COBRA, as long as he or she is covered under the plan on the day before the qualifying event.

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The employee or independent contractor is not eligible if the termination of employment is due to gross misconduct.

Which dependents are eligible for COBRA?

Dependents who are covered under the plan on the day before the employee's termination of employment or reduction in work hours are eligible for COBRA. Dependents who lose their coverage due to the other qualifying events listed above are also eligible for COBRA, even though the employee is not. Each covered family member can elect COBRA independently, so it is possible that only some of the eligible family members will choose COBRA.

Domestic partners and their children are not generally eligible for COBRA coverage. However, some policies allow employers to add this option to their plans, so check the terms of your policy to determine if the rules apply to domestic partners.

How long does COBRA coverage last?

The maximum COBRA period following an employee's termination of employment or loss of eligibility due to reduction in work hours is 18 months. However, this maximum period can be extended 11 months for a total of 29 months if the employee or one of his covered dependents is determined by the Social Security Administration to be disabled. The 18-month period may also be extended for an additional 18 months for covered dependents (but not the employee) in the event of the death, divorce or Medicare eligibility of the employee, or if the dependent ceases to meet eligibility requirements for coverage. The 11-month extension for disability and the 18-month extension for a second qualifying event are not cumulative: the total extension will never result in a maximum total period of more than 36 months.

If the original triggering event for COBRA is the death or disability of the employee, or the loss of eligibility status by the dependent, the maximum COBRA period is 36 months.

COBRA will terminate sooner than the maximum period if:

- Required premiums are not paid,
- The employee or dependent becomes covered under another group health plan or Medicare,
- If the 11-month extension for disability is in effect, the Social Security Administration determines that the person is no longer disabled, or
- The employer stops providing group health benefits to all of its employees.

Extension of COBRA coverage for employees aged 60 and older

Georgia law provides for an additional extension of continuation coverage for an employee and his dependents who originally become eligible for federal COBRA due to termination of employment. This additional extension does not apply if

- Employment was terminated voluntarily for non-health related reasons, or
- Employment was terminated for reasons that would cause a forfeiture of unemployment benefits.

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Coverage may be extended if an eligible employee and his dependents exhaust their federal COBRA coverage (that is, if they continue COBRA coverage for the maximum applicable period), and if the employee was at least 60 years old on the date the COBRA coverage began. This extension also applies to the surviving or divorced spouse (and any covered dependent children) of an employee, if the spouse is covered under the plan and is age 60 or older on the date of the employee's death or divorce. Coverage may be extended until:

- The date the employee or surviving or divorced spouse becomes entitled to Medicare,
- The date the employee or surviving or divorced spouse becomes covered under another group health plan,
- Coverage is terminated for non-payment of premiums, or
- The date the employer terminates coverage for all employees.

How much does COBRA coverage cost?

The employee and/or dependents must pay the full cost of coverage (both the employer and employee portions) during the original COBRA period, and a 2% administrative charge may be added. This cost increases to 150% of the full cost of coverage during the 11-month disability extension, and 120% of the full cost of coverage during the extension for employees over the age of 60.

Payments must be allowed on at least a monthly basis. While they are due on the first day of the coverage period, COBRA requires that a 30-day grace period be allowed. (The grace period may be longer if the policy allows a longer grace period under other circumstances.)

What are the employer's responsibilities?

COBRA imposes significant notice requirements on employers. In some cases, the insurance company will fulfill these requirements, but it is important to understand that, in general, the employer has the legal responsibility to see that all notices are given properly. Failure to do so can lead to penalties of \$110 per day per violation.

COBRA requires

- A general notice outlining COBRA rights and obligations must be provided to the employee and, if covered, the spouse, within 90 days of beginning coverage. Note that a separate notice will need to be sent to the spouse if he or she first becomes covered under the plan after the employee.
- A notice and election form must be given to each employee and covered dependent within 44 days after an employee's loss of employment, reduction in hours, or death. The notice and election form must be given within 14 days after receiving notice of an employee's divorce or a dependent's loss of eligibility status. (The employee and/or his dependent have the responsibility to notify the employer within 60 days that one of these events has occurred.)
- If an employee or dependent requests COBRA coverage and it is determined that he or

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she is not eligible for the coverage, a written notice must be provided explaining the reason for the denial.

- If COBRA coverage is to be terminated earlier than the maximum applicable period, a notice of the termination must be provided to the covered employee and any dependents explaining why coverage is being terminated.
- Within 180 days prior to expiration of the maximum applicable period, a notice outlining any conversion options under the plan must be provided. The employer should coordinate this notice with the insurance company's practices.

In general, all notices should be sent by first class, certified, or registered United States mail, addressed to both the employee and spouse at the last known home address.

It is not necessary for the employer to provide these notices if the insurance company is doing so, but it is important to get a clear idea of which notices are being provided, and to make sure that they are being provided in a manner and within the time limits imposed by COBRA. Additional information about the notice requirements and model notice language is available at <http://www.dol.gov/ebsa/cobra.html>.

II. Under Georgia Law

Georgia law provides for limited continuation of coverage following termination of employment. These rules apply to companies that are not subject to federal COBRA because they have fewer than 20 employees.

Which employees are eligible?

An employee who terminates employment and loses coverage under the employer's health plan may be eligible to continue his coverage if:

- The employee has been continually covered under the plan for at least six months prior to termination of employment,
- The employee's employment is not terminated for cause, and
- The employee's health coverage is not terminated for failure to pay premiums.

Are dependents eligible for continued coverage if the employee is eligible?

The employee's spouse and dependent children are also eligible for continued coverage if they are covered under the plan the day before coverage is terminated.

Are dependents eligible for continued coverage in the event of death or divorce of the employee?

The Georgia rules for continuation of coverage do not apply to coverage that is lost when an employee dies or divorces. However, a covered spouse or dependent child may be eligible to purchase a conversion policy within 31 days of the death or entry of the divorce decree. The employer should review its insurance policy or check with the insurance company to determine whether the policy imposes any responsibilities on the employer to notify the covered dependents of these conversion rights.

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How much does continued coverage cost?

The cost for continued coverage is the same rate that applies to active employees and, where applicable, their covered dependents. The employee is responsible for paying both the employer and employee portion of the cost.

How long does it last?

Continued coverage lasts until the end of the policy month in which employment terminates and for three full months thereafter. At the end of the period, the employee and covered family members will have the right to convert to an individual policy.

What are the employer's responsibilities?

The employer should contact its insurance company when an employee becomes eligible for the continuation of coverage to determine:

- Whether the insurer requires any special forms to be completed. (Typically, this is not necessary and the employer will keep the former employee and any covered dependents on the eligibility rolls during the continuation period, but every insurance company has different practices.)
- Whether -and if so, when - the employer is responsible for giving the employee any notice of his conversion rights when the continuation coverage period ends.

As policyholder, the employer must collect premium payments from the former employee and continue to forward those payments to the insurance company in advance of each period of coverage. The employer can establish the required method of payment - that is, by cash, certified check, or money order.

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