

# Table Of Contents

<b>Section</b>	<b>Page</b>
Introduction.....	1
 <b><u>I. COBRA Coverage — What The Law Requires</u></b>	
<b>I.1:</b> Which employers are required to comply with COBRA?.....	3
<b>I.2:</b> What kinds of group health coverage are subject to COBRA?.....	4
<b>I.3:</b> If we change our current company health plan options, for better or worse, does the new coverage apply to COBRA participants as well?.....	4
<b>I.4:</b> Can I pass along all health insurance premium increases to COBRA beneficiaries?.....	5
<b>I.5:</b> Are beneficiaries who have elected COBRA coverage affected by an open enrollment period?.....	5
<b>I.6:</b> Can a COBRA beneficiary drop his/her own coverage, but continue coverage for a family member?.....	5
<b>I.7:</b> What happens if we have more than 20 employees in one year, and the next year we don't? Are we required to offer COBRA coverage only during some years?.....	5
 <b><u>II. Rights To COBRA Continuation Coverage</u></b>	
<b>II.1:</b> Are we required to offer coverage to a child born to or adopted by a former employee covered by COBRA?.....	8
<b>II.2:</b> Do we have to offer COBRA coverage to a terminated employee who is covered by a spouse's insurance?.....	8
<b>II.3:</b> A former employee receiving COBRA coverage under our plan got a new job and is now covered by his new employer's health plan. Do we have to continue his COBRA coverage?.....	8
<b>II.4:</b> The daughter of a former employee was receiving COBRA coverage. Although she was over 19, our plan continued her coverage because she was a full-time student. What happens if she's no longer in school?.....	9
<b>II.5:</b> The son of an employee turned 19 and began receiving COBRA coverage because he was no longer a dependent under the terms of our plan. When he enrolls in college and becomes a dependent again, what do we do?.....	9

- II.6:** *A former employee had only single and not family coverage under the company's health plan when he was terminated. Can he elect COBRA coverage for his family when he elects it for himself? .....9*
- II.7:** *A former employee, who is currently receiving COBRA, has married. Do we have to include the new spouse under his COBRA coverage?.....9*
- II.8:** *A terminated employee elected COBRA coverage for his spouse, who participated in our health plan. We learned they are not legally married. Do we have to provide the spouse with COBRA coverage?.....10*
- II.9:** *Our company provides domestic partner benefits under our health plan. Do we have to provide COBRA coverage to domestic partners? If not, can we?.....10*

### **III. Events That Trigger COBRA Eligibility**

- III.1:** *Is an employee's retirement considered a COBRA qualifying event?.....12*
- III.2:** *Are we required to offer COBRA coverage to an employee called to active military duty?.....12*
- III.3:** *If an employee terminates employment, elects COBRA coverage, is later rehired, then terminates employment again, is he/she still entitled to COBRA coverage?.....13*
- III.4:** *We just fired an employee for punching a co-worker. Do we need to offer him and his family COBRA continuation coverage?.....13*
- III.5:** *If employees go on strike, are they entitled to COBRA coverage?.....13*
- III.6:** *We recently laid off some workers because our business has fallen off. They may be rehired if conditions change. Are they entitled to COBRA continuation coverage?.....14*
- III.7:** *One of our employees has to cut back his work hours based on a doctor's advice, and is now a part-time employee. We don't offer part-time employees coverage under our health plan. Do we still have to provide him with COBRA coverage?.....14*
- III.8:** *In our company, only salaried employees are entitled to group health coverage. The position of one of our salaried workers was recently reclassified to an hourly status and she will lose health coverage. She still is working the same hours. Is this a qualifying event?.....14*
- III.9:** *A dependent covered under her parent's health insurance reached age 21 and is not a student. No longer an eligible dependent, she began COBRA coverage. After a year of COBRA coverage, she enrolled as a full-time student and again became an eligible dependent in her parent's coverage. When she reaches age 23 and no longer qualifies as an eligible dependent, does she begin a new 36-month COBRA eligibility period?.....14*

**III.10:** *A former employee and his spouse currently have COBRA coverage due to his termination of employment. The former employee has now become entitled to Medicare. Will the spouse be entitled to 36 months of coverage as a multiple qualifying event?.....14*

**III.11:** *If the company currently pays 90% of the premium for employees and we decide to reduce that payment to 60%, would this be considered a qualifying event in relation to the “loss of coverage” concept?.....15*

## **IV. Duration Of COBRA Coverage**

**IV.1:** *We have a covered employee who was determined to be totally and permanently disabled by the Social Security Administration (SSA) within 60 days after the qualifying event. Does she get an extended COBRA term?.....18*

**IV.2:** *To be eligible for an 11-month disability extension, does the QB have to be disabled on the day of the qualifying event?.....18*

**IV.3:** *What if a disabled employee doesn't ever get an “official” disability determination from the SSA. Does that affect us?.....18*

**IV.4:** *Could a disabled QB ever receive 36 months of COBRA coverage?.....19*

**IV.5:** *Can the 11-month disability extension ever be cut short?.....19*

**IV.6:** *A few months ago, an employee terminated employment and both he and his spouse elected COBRA coverage. They recently divorced. Is the divorce a second qualifying event extending the term of coverage?.....19*

**IV.7:** *Only the spouse of a terminated employee elected COBRA coverage. A few months later, they divorce. Are we required to extend spousal coverage from 18 to 36 months?.....19*

**IV.8:** *If an employee's child loses his/her dependent status, but fails to notify us for several months, is he/she still entitled to COBRA continuation coverage?.....20*

**IV.9:** *What happens to the COBRA coverage period if an employee becomes entitled to Medicare and then loses his job or has a reduction in hours (i.e., a qualifying event)?..20*

## **V. Electing COBRA Coverage**

**V.1:** *When a terminated employee left our company, we sent a qualifying event notice to her home address. She had moved and didn't get the notice. After the 60-day election period expired, she contacted us for coverage. Can she still elect coverage?.....21*

**V.2:** *One of my employees waived his COBRA coverage. Now he says he's changed his mind. Can he still elect COBRA coverage?.....22*

**V.3:** *Is a waiver before the end of the election period effective in restoring a qualified beneficiary’s election rights?.....22*

**V.4:** *Does each member of a terminated employee’s family have a right to elect COBRA coverage, or does the terminated employee elect it for everyone?.....22*

**VI. Paying For COBRA Coverage**

**VI.1:** *Does COBRA prohibit charging different premiums based on a covered employee’s marital status?.....24*

**VI.2:** *What happens if we are a little late mailing out a COBRA notice?.....24*

**VI.3:** *Can COBRA participants be subject to increases in health plan rates?.....24*

**VI.4:** *What if a COBRA beneficiary pays for most, but not all, of the COBRA premium?.....24*

**VI.5:** *What happens if a COBRA beneficiary doesn’t pay premiums on time?.....24*

**VI.6:** *What if the COBRA premium is paid by check and the check bounces?.....24*

**VI.7:** *My employees are on strike and eligible for COBRA. Do I have to accept payment for COBRA benefits from their union?.....25*

**VI.8:** *An employee’s unpaid leave of absence that lasts more than one month triggers COBRA coverage, according to our company policy. Can he deduct COBRA premiums from his last paycheck on a pre-tax basis? Regular employee premiums are deducted on a pre-tax basis.....25*

**VI.9:** *What are my COBRA obligations if an employee can’t afford the premiums?.....25*

**VII. COBRA Notice Requirements**

**VII.1:** *What are COBRA notice timing requirements?.....28*

**VII.2:** *What information should the COBRA General Notice contain?.....29*

**VII.3:** *What should an Employer Notice to the Plan Administrator look like?.....30*

**VII.4:** *The DOL’s final COBRA rules require that plan administrators establish “reasonable procedures” for qualified beneficiaries to give notice of qualifying events. What does the DOL consider “reasonable”?.....30*

**VII.5:** *What happens if a plan does not establish reasonable procedures for qualified beneficiaries to give qualifying event notices?.....31*

<b>VII.6:</b> <i>What information should the COBRA Election Notice contain?.....</i>	<i>31</i>
<b>VII.7:</b> <i>In what circumstances would an administrator send an Unavailability Notice and what information should that notice contain?.....</i>	<i>32</i>
<b>VII.8:</b> <i>In what situations would it be appropriate to send a notice of early termination of COBRA coverage, and what are its content requirements?.....</i>	<i>32</i>
<b>VII.9:</b> <i>We are not planning to put the General Notice in the SPD. What information should our SPD contain about COBRA coverage?.....</i>	<i>32</i>
<b>VII.10:</b> <i>What are the acceptable ways for plan administrators to “furnish” notices — e.g., General Notices, Election Notices, Unavailability Notices, and Early Termination Notices — to employees and/or qualified beneficiaries?.....</i>	<i>33</i>
<b>VII.11:</b> <i>Is it important to maintain proof of mailing?.....</i>	<i>33</i>
<b>VII.12:</b> <i>When I terminated an employee, I told him verbally of his COBRA rights. Did I meet the notice requirements under the law?.....</i>	<i>34</i>
<b>VII.13:</b> <i>Can I provide a single notice to an employee and his/her spouse?.....</i>	<i>34</i>
<b>VII.14:</b> <i>Do I have to furnish a separate notice to dependents?.....</i>	<i>34</i>
<b>VII.15:</b> <i>Do I have to furnish a General Notice if an employee had a QE two months after he began group health coverage?.....</i>	<i>34</i>
<b>VII.16:</b> <i>May a plan administrator reject an incomplete QB notice of a QE?.....</i>	<i>34</i>
<b>VII.17:</b> <i>What are the time limits for delivering an Election Notice if the employer is also the plan administrator?.....</i>	<i>35</i>
<b>VII.18:</b> <i>One of our employees has been jailed and his employment was recently terminated. Pursuant to a court order, he carried dependent coverage for his daughter. If he is in jail, how can we send him COBRA notification? Also, how do we handle the COBRA notice for his child?.....</i>	<i>35</i>
<b>VII.19:</b> <i>A terminated employee did not receive a COBRA notice from the health plan’s third party administrator (TPA). Which party is liable for failing to provide the COBRA election notice?.....</i>	<i>35</i>

## **VIII. Issues Concerning COBRA Termination**

<b>VIII.1:</b> <i>Must a qualified beneficiary be given the right to enroll in a conversion health plan at the end of the maximum coverage period for COBRA continuation coverage?.....</i>	<i>38</i>
<b>VIII.2:</b> <i>How many premiums does a beneficiary have to fail to pay before we can terminate COBRA for non-payment of premiums?.....</i>	<i>38</i>

**VIII.3:** *A QB has paid the entire COBRA premiums for the month of April, by April 1. On April 15, the QB would like to revoke the coverage for the rest of the month and receive a refund of the premium portion for the balance of the month. Do I have to provide a partial refund of the COBRA premium?.....38*

**VIII.4:** *If a COBRA beneficiary moves out of the area served by an employer's plan, does he/she retain COBRA coverage?.....39*

**VIII.5:** *My company maintains one health plan that is an area HMO. It basically covers medical facilities/physicians in our area and charges a high fee for out-of-network services. A former employee on COBRA has moved away and says we have to sign him up for a similar HMO in his new area. Is this true?.....39*

**VIII.6:** *Can I terminate COBRA coverage to a worker who is terminated when his or her status as an undocumented alien is discovered?.....39*

**VIII.7:** *If an employee terminates employment, elects COBRA coverage, is later rehired, then terminates employment again, is he/she still entitled to COBRA coverage?.....39*

## **IX. COBRA And Other Laws (FMLA/HIPAA/USERRA)**

**IX.1:** *If an employee takes a leave of absence under the FMLA, must we offer COBRA?...42*

**IX.2:** *Under what circumstances does a COBRA qualifying event occur if an employee does not return from an FMLA leave?.....42*

**IX.3:** *When is the qualifying event considered to have occurred when an employee fails to return from FMLA leave?.....43*

**IX.4:** *We have an employee who has failed to pay her share of the premiums for coverage under my company's group health plan during her FMLA leave. So she currently isn't covered under the plan. If she fails to return when her leave is over, does a qualifying event occur then? If so, do we have to offer COBRA coverage?.....43*

**IX.5:** *Can I condition COBRA continuation coverage on the reimbursement of premiums the company paid for an employee's health coverage during his/her FMLA leave?.....43*

**IX.6:** *How does the Health Insurance Portability and Accountability Act (HIPAA) relate to COBRA?.....43*

**IX.7:** *Are employees who are eligible for COBRA also entitled to the protections of HIPAA?.....44*

**IX.8:** *What changes to COBRA occurred as a result of the Trade Act of 2002?.....44*

**IX.9:** *Are participants in a health reimbursement arrangement (HRA) eligible for COBRA continuation coverage?*.....44

**IX.10:** *Do I have to provide COBRA to a QB who lost health FSA coverage as a result of a qualifying event?*.....45

**IX.11:** *We know that under the Uniformed Services Employment and Reemployment Rights Act (USERRA), employees in the uniformed services who are called to duty are entitled to 24 months of health plan continuation coverage. Does this mean that we have to offer these individuals 24 months of COBRA continuation coverage? Or does it mean that after 18 months of COBRA coverage we have to extend that coverage for another 24 months?*.....45

**IX.12:** *Is USERRA continuation coverage identical to COBRA continuation coverage?*.....46

**IX.13:** *Since USERRA doesn't stipulate specific procedures for electing continuation coverage, can we implement the same procedures we have in place for electing COBRA coverage?*.....46

**IX.14:** *How do you recommend that we notify employees of their rights to health care continuation coverage under USERRA?*.....46

**X. COBRA Administration And Penalties For Non-Compliance**

**X.1:** *What records am I required to keep under COBRA?*.....50

**X.2:** *How do a plan's limits apply to COBRA continuation coverage?*.....50

**X.3:** *Can an employer or employee organization withhold money or other benefits owed to a qualified beneficiary until the qualified beneficiary either waives COBRA coverage, elects and pays for such coverage, or allows the election period to expire?*.....51

**X.4:** *A terminated employee is still eligible to elect COBRA coverage, but has not yet done so. Do claims incurred during the election period have to be paid?*.....51

**X.5:** *What are the consequences of violating COBRA's provisions?*.....51

**XI. Special Situations**

**XI.1:** *I own two separate companies. Do employees of both companies get counted together to determine whether I must offer COBRA coverage?*.....53

**XI.2:** *Under our company policies, new employees are on "probation" for three months. We just fired a female employee during her probationary period. Within the COBRA enrollment period she discovered she is pregnant. Do we have to provide COBRA coverage?*.....54

**XI.3:** *What if our probationary period ties in with a requirement by our insurance carrier that it won't provide COBRA coverage for employees who aren't employed for 90 days? Do we still have to provide COBRA coverage in this situation?.....54*

**XI.4:** *My company may be closing due to financial problems. If so, will we have to offer COBRA coverage to our employees?.....54*

**XI.5:** *We recently changed carriers to provide a broader, more cost-effective health plan to our employees. Do we have to offer new coverage to existing qualified COBRA beneficiaries?.....54*

**XI.6:** *I recently changed carriers and the new coverage takes effect during someone's COBRA election period. The QB has forms for the old coverage. Does the new carrier have to accept a COBRA election on the old forms?.....54*

**XI.7:** *Are there any privacy issues to worry about if an employee tells someone from Human Resources, say, at the supermarket or at a cocktail party, that there has been a COBRA qualifying event, such as an impending divorce?.....55*

## **XII. Subsidized COBRA Coverage**

**XII.1:** *Our plan is too small to be covered under the federal COBRA rules. It is covered under our state's similar COBRA law, however. Does this new COBRA subsidy affect our plan?.....59*

**XII.2:** *Employees are eligible for Trade Act adjustment assistance, so they're already receiving a 65% COBRA subsidy. Does anything in the economic stimulus law affect them?.....59*

**XII.3:** *Are employees who were terminated for gross misconduct eligible for the subsidy?.....59*

**XII.4:** *I understand that employees who were involuntarily terminated receive a subsidy for 65% of their COBRA premiums. What about someone who has their hours cut from full-time to part-time, which results in the loss of the employer-paid portion of their health benefits? Are they eligible to be covered under this?.....60*

**XII.5:** *In addition to an employee actually being fired or permanently laid off, are there any other terminations that would qualify as involuntary terminations for COBRA subsidy purposes?.....60*

**XII.6:** *Are all employees who are terminated between September 1, 2008, and February 28, 2010, eligible for the COBRA subsidy?.....60*

**XII.7:** *Are all of an employee's legal dependents assistance-eligible individuals?.....60*

**XII.8:** *We just found out about the extension of the COBRA subsidy. Unfortunately, two former employees who elected COBRA have already made their first payments in full. How do we handle this?.....61*

<b>XII.9:</b> <i>As part of a separation agreement, the company has agreed to pay an employee's COBRA. The employee was otherwise involuntarily separated. Is the employee still entitled to the COBRA subsidy, and how much would that subsidy be?.....</i>	<i>61</i>
<b>XII.10:</b> <i>As part of a severance agreement, the company has decided to charge the employee the same amount as for active employees for the first 90 days. Does this affect the length of the COBRA subsidy? .....</i>	<i>61</i>
<b>XII.11:</b> <i>Are all health benefits eligible for the COBRA subsidy, or are some excluded?.....</i>	<i>61</i>
<b>XII.12:</b> <i>QBs electing COBRA coverage must normally take the same coverage they had the day before they lost their employer-provided coverage. Does this rule also apply to QBs who are taking the COBRA subsidy?.....</i>	<i>62</i>
<b>XII.13:</b> <i>QBs electing COBRA can change their coverage during their former employer's open enrollment season. Does this rule apply to QBs who are eligible for subsidized COBRA coverage?.....</i>	<i>62</i>
<b>XII.14:</b> <i>When does the COBRA subsidy period end?.....</i>	<i>62</i>
<b>XII.15:</b> <i>What happens if a QB who is currently receiving a COBRA subsidy becomes covered under another employer's group health plan that's more expensive than their subsidy? Can they keep paying on the COBRA plan until the subsidy runs out?.....</i>	<i>62</i>
<b>XII.16:</b> <i>What happens if an assistance-eligible individual doesn't notify the old employer that they're eligible for coverage under another plan?.....</i>	<i>62</i>
<b>XII.17:</b> <i>A new employer's health plan has a 90-day waiting period under which new hires aren't eligible for coverage. How does this impact the COBRA subsidy?.....</i>	<i>62</i>
<b>XII.18:</b> <i>Can an assistance-eligible individual qualify for more than one subsidy period?.....</i>	<i>62</i>
<b>XII.19:</b> <i>Who are the COBRA-payable entities that are entitled to take a payroll tax credit?.....</i>	<i>63</i>
<b>XII.20:</b> <i>What does an employer have to do to claim its COBRA payroll tax credit?.....</i>	<i>63</i>
<b>XII.21:</b> <i>What would happen if an employer pays the COBRA bill and takes the credit for a month, but the next month finds out that the assistance-eligible individual didn't pay their 35%? Wouldn't the credit element have to be negative, and wouldn't that ultimately increase the amount of a tax deposit?.....</i>	<i>63</i>
<b>XII.22:</b> <i>How does an employer account for the credit when it files its quarterly Form 941?.....</i>	<i>63</i>
<b>XII.23:</b> <i>What happens if Line 12a ends up being larger than Line 10 on Form 941? Will this result in a net negative of taxes for the company?.....</i>	<i>64</i>
<b>XII.24:</b> <i>Does the COBRA credit affect reporting on Form 941 Schedule B, Record of Federal Tax Liability (ROFT)?.....</i>	<i>64</i>

**XII.25:** *Must the number of QBs be reported on each quarter's Form 941, whether or not there was a tax credit amount to apply?*.....64

**XII.26:** *How are subsidy notice provisions affected by the DODA Act of 2010?*.....64

**XII.27:** *What steps must a company take to comply with this new COBRA mandate?*.....65

**XII.28:** *What legal recourse does an assistance-eligible individual have if they believe that they were wrongfully denied a COBRA subsidy?*.....65

**Index**.....67