

Question	Answer
Q: Are seasonal employees counted when determining if a company is subject to COBRA?	A: Yes - seasonal employees must be taken into account when determining if an employer is subject to COBRA. The IRS COBRA regulations state: "...An employer is considered to have normally employed fewer than 20 employees during a particular calendar year if, and only if, it had fewer than 20 employees on at least 50 percent of its typical business days during that year" Consequently, seasonal employees could make the difference for some employers in meeting this criteria.
Q: Are the COBRA payments on a health FSA plan due monthly or is the annual remaining balance due in 1 payment?	A: When a qualified beneficiary continues benefits under COBRA, including a health FSA, the employer must allow the individual to pay the required premium on a monthly basis.
Q: as the employer we don't know the names of dependents or spouses that are covered, how do I notify the covered dependents of COBRA if I don't know who they are?	A: If the employee carries family coverage then it is recommended that the notices sent to the home at least be addressed to the employee and family (e.g. "Joe Employee and family"). In the case of the death of the employee, divorce from the employee or a dependent losing eligibility COBRA event the notice must be sent to the applicable qualified beneficiary and should be addressed as completely and accurately as possible.
Q: The website http://www.dol.gov/ebsa/compliance_assistance.html does not work.	A: The webinar slides included an out of date link to a DOL website that contains model COBRA notices in both English and Spanish. The DOL link has changed to http://www.dol.gov/ebsa/cobra.html .
Q: Can you please clarify IRS ruling 2004-22 regarding Medicare as a second event. Q: Employee retired and went on COBRA w/spouse. He is now eligible for Medicare effective 1/1, how much longer can the spouse stay on COBRA?	A: If an employee, spouse and/or dependents elect COBRA, and then the former employee becomes entitled to Medicare during the initial 18 months of COBRA, the spouse and children are not entitled to extend their COBRA coverage beyond the initial 18 month COBRA eligibility period.
Q: I'm sorry if I missed it but can you please identify the proper way to calculate HRA COBRA premiums.	A: COBRA premiums for an HRA must be calculated based on the "past employer cost" or actuarial method. In both cases the premiums are principally based on the total amount of reimbursements paid by the plan as a whole converted to a "premium equivalent" that is the same for all similarly situated HRA participants. An individual's HRA COBRA premiums cannot be based on the benefits available to, or the HRA reimbursements made to, that particular individual.

<p>Q: Does COBRA apply to corporate wellness plans?</p> <p>Q: If EAP is offered as an employee benefit do you have to COBRA the benefit?</p> <p>Q: If an employer offers a risk assessment to employee under wellness program is that health plan for COBRA purposes?</p>	<p>A: If an EAP or a wellness program or benefits is considered an employer sponsored health plan then it should be offered to qualified beneficiaries in the case of a COBRA event.</p> <p>Whether these benefits must be treated as a health plan is a complex question beyond the scope of what can be covered in this Q&A. In general, however, if an employer provided EAP or wellness program provides for (or pays for) actual treatment, medical tests, or other health care services it may need to be treated as an employer sponsored health plan. On the other hand, wellness plans that involve only fitness, education and other programming, not related to the actual delivery of health care services, and EAPs that provide only referrals are usually not considered health plans.</p>
<p>Q: If an employee changes coverage from family to single coverage and you later find out that they got a divorce, what is the company's responsibility to reach out to communicate COBRA rights?</p> <p>Q: Please enlighten as to "reasonable procedures" by employee or beneficiary to notify employer of "certain events".</p>	<p>A: COBRA requires that the employee or qualified beneficiary notify the employer of a divorce or legal separation within 60 days of the event. The 2004 DOL COBRA notice regulations also allow an employer to implement reasonable procedures regarding this notice requirement. For example, an employer could require the notice be provided in writing. If the employer implements employee notice procedures and requirements they must be articulated in the initial COBRA notice provided to both the employee and covered spouses. The DOL regulations also state that the procedures should be communicated to employees and included in the employers employee handbook.</p> <p>If these requirements are met and the employee or qualified beneficiary fail to notify the employer within the required timeframe then the divorced spouse may lose their COBRA rights. However, this is a common area of COBRA litigation so it is recommended that employers facing this scenario seek the assistance of qualified legal counsel.</p>
<p>Q: If employer health insurance coverage is to be terminated due to a COBRA event when does the 4 days notification period start?</p>	<p>A: COBRA regulations specify that the employer has 30 days to notify the "COBRA administrator" and the administrator then has up to 14 days to notify the qualified beneficiaries of their COBRA rights. In the event the employer self-administers COBRA the regulations do not make it entirely clear when the extra 30 days may be applied, therefore it is recommended that the employer send the notices within 14 days of the termination of employment. For COBRA events that require the employee or qualified beneficiary to notify the employer, the clock starts when the employer is notified.</p>
<p>Q: If the employee elected coverage but never paid the premium within the 45 days, than elects to cancel Cobra, do we still need to send a termination of Cobra coverage letter?</p>	<p>A: If a Q.B elects COBRA. and then does not pay any required premium within the required 45 day timeframe, then COBRA coverage was never effective. Consequently there would be no requirement to send a termination of COBRA notice.</p>

Q: Is it crucial to use certified mail to send out initial notices and COBRA notices?	A: COBRA regulations do not require that notices be sent by certified mail. In fact, the DOL notice regulations specifically list delivery by first class mail as a reasonable delivery method. However, some employers choose to use some form of proof of mail as additional documentation to be used in the case of a dispute over the delivery of a required notice. One method popular with employers and COBRA administrators is the postal service "proof of mailing" receipt. This process certifies that a document was mailed, but the recipient is not required to sign for it.
Q: Is there a W-2 reporting requirement for COBRA participants, even though they are no longer employees?	A: Health care cost reporting is not required unless the employer is required to provide a W-2 to the individual. In the case of a former employee who will be receiving a W-2 for the year IRS W-2 reporting guidance states that the employer has the option to report only the premiums for the time the individual was an active employee, or to report premiums for the entire time the individual was covered by the plan, including COBRA continuation period. The employer must use the same reporting method for all employees.
Q: So individuals don't have to select COBRA right away, and could choose it if they discovered they needed coverage, like in an emergency. Does health reform change this in any way?	A: A qualified beneficiary must elect COBRA within 60 days from the date of the COBRA notice or their loss of coverage date whichever is later. The Affordable Care Act does not change the COBRA election rules in any way.
Q: What information can you give the listeners about dependent eligibility audits and COBRA? my company did an audit but were unsure how to handle COBRA participants who were deemed ineligible.	A: An employers proper decision in this case would rest on the facts and circumstances of the particular situation. We would recommend retaining the services of legal counsel if the employer is considering terminating an individual's COBRA coverage due to eligibility issues.
Q: When does an employee's Medicare entitlement allow dependents 36 months of COBRA?	A: If the spouse or dependent child's loss of coverage is due to the employee's entitlement to Medicare then the spouse or dependent child are eligible for 36 months of COBRA continuation. The most common application of this rule is when an employee becomes entitled to Medicare at the time of their retirement. There is some debate regarding this example whether the employee's entitlement to Medicare caused the loss of coverage, or if this should simply be treated as an 18 month termination of employment event. The COBRA regulations do not clearly address this question, thus employers may want to consult with legal counsel when choosing which approach to adopt.
Q: For total disability extension(s), to whom does employer charge the 150% of premium for months 19-29?	A: In the event that a Q.B. qualifies for the extension of COBRA coverage due to total disability, the employer is allowed to charge the Q.B a COBRA premium of up to 150% of the actual plans applicable premium. The 150% can only be changed after the initial 18 month of COBRA eligibility for the individual.

<p>Q: Please expand on the rule that a health FSA must be offered to a COBRA Q.B. "if FSA benefit available is greater than premium for remainder of year".</p>	<p>A: In general a health FSA that is funded solely by employee pre-tax payroll reductions need only be offered to a COBRA Q.B. if the benefits available to the individual under the plan exceed the required COBRA premium for the same period.</p> <p>For example:</p> <ul style="list-style-type: none"> - An employee has elected to contribute \$1200 for a calendar year health FSA - The employee has already had \$1000 of claims reimbursed through the FSA prior to a termination of employment on June 30th. <p>In this case the employer would not be required to offer COBRA continuation for the FSA plan because the total benefit available under the plan for the remainder of the year (\$200) is less than the amount the Q.B. would have to pay to continue the plan for the remainder of the year (\$612 - since the monthly premium would be \$102)</p>
<p>Q: Please provide further explanation as to when COBRA may be a better option to avoid individuals being taxed for not having own health insurance as ACA mandates. (i.e., will individual COBRA monthly coverage costs x 12 months be less than an imposed tax?)</p>	<p>A: The point being made was not to imply that 12 months of COBRA premium would necessarily be less than the Affordable Care Act individual mandate tax that would apply to an individual. However, once the tax is fully in place, uninsured individuals will have a significant financial incentive to have some kind of health care coverage. In some cases, depending on cost and other factors, an individual's COBRA coverage could be the best health insurance options available to avoid paying the tax.</p>
<p>Q: When calculating the number of employees who work for a company what will be the definition of full-time. Will it be 30 hours a week like with the ACA?</p>	<p>A: The IRS COBRA regulations create a special rule for counting part-time employees for purposes of the small employer exception which differs from the ACA definition of full time employee. A part-time employee must be counted as a fraction of an employee. The fraction is equal to the number of hours that the part-time employee works divided by the number of hours that an employee must work in order to be considered a full-time employee. consistent with the employer's general employment practices. However full time cannot be more than eight hours a day or 40 hours a week.</p>
<p>Q: How do we know if dependents are living at a separate address if one is not listed? Is it sufficient to send just the one Cobra notice to the one resident address listed on the health insurance application? This is usually the question when we are dealing with employees who have child support, but no address for the children is listed.</p>	<p>A: The DOL COBRA regulations include rules on how to notify multiple qualified beneficiaries in an employee's family unit:</p> <ul style="list-style-type: none"> * The plan administrator may notify a covered employee and spouse with a single notice addressed to both as long as it is based on the most recent information available to the plan, the employee and spouse resides at the same address. * The plan administrator may notify each child of a covered employee by furnishing a single notice to the covered employee or the covered employee's spouse, as long as based on the most recent information available to the plan, the child resides at the same address as the employee or spouse. <p>If, on the other hand, the employer has information that the spouse or child live at a different address a separate notice should be sent.</p>

Q: if you have COBRA HRA and then the next year the company decides not to do HRA for current employees it also stops for COBRA people?

A: Q.B.s must be provided the same coverage under COBRA continuation as is offered to similarly situated employees. If the employer changes plan design for all similarly situated employees, COBRA continuees would be provided the same coverage.

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