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What's the Buzz About Election Notices?

By Juli Hanshaw

The election notice, also referred to as the COBRA qualifying event notice, is probably the top source of contention in COBRA disputes. These issues tend to focus on four areas:

- 1) what the notice says;
- 2) what was left out of the notice;
- 3) how the notice was sent; and
- 4) whether it was ever sent at all.

This notice is required to be mailed, first class mail with proof of mailing recommended, when a covered employee experiences a qualifying event such as a covered employee's death, termination of employment for reasons other than gross misconduct and reduction in work hours. Employers must notify their plan administrator within 30 days of these events and the notices then must be mailed within 14 days, for a total of no more than 44 days following the event. If the employer and plan administrator are the same entity, the time frame is simply 44 days.

Proper compliance begins with comprehensive information at the employer level. It is the employer's responsibility to provide written information about COBRA coverage to a covered employee or qualified beneficiary (QB) on the group health plan if an event occurs where coverage is lost. (See sidebar.)

The employer must be aware of when the following events occur:

- Covered employee's death
- Termination of employment for reasons other than gross misconduct
- Reduction in work hours
- Divorce or legal separation
- Dependent child ceasing to be a dependent
- Medicare entitlement
- Bankruptcy proceedings (for retirees and their covered family members)

COBRA rules state the covered employee or QB is required to notify the employer or plan administrator of events including:

- A divorce or legal separation
- Dependent child ceasing to be a dependent
- A second qualifying event during an 18-month COBRA period
- Disability determination by the Social Security Administration
- No longer disabled by Social Security Administration

COBRA is a strict law that brings many headaches. A good prescription to take with this is to have written procedures and be consistent in following these each time an event occurs. One of the recommendations is to mail all qualifying event notices with proof of mailing. With these procedures in place, it is an asset should anyone question whether a notice was mailed or the address to which it was sent.

While the U.S. Department of Labor has provided a model notice that should be viewed as a starting point for COBRA compliance and may have to be adapted to address the specifics of an employer's plan. An employer may want to provide additional information with the election notice, including: (1) trade adjustment assistance rights; (2) how COBRA works with a flexible spending account; and (3) anticipation of a qualifying event rule.

Prudent employers should regularly review their election notices to ensure they continue to be accurate and "written in a manner calculated to be understood by the average plan participant." Contact and plan information will change from time to time.

However, one thing has not changed. Election notices continue to be the number one COBRA reason employers find themselves in court. 🏠

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Content of Qualifying Event Notices

The notice of continuation rights must contain:

- Plan name, and the address and telephone number of who is responsible for COBRA administration.
- Type of qualifying event that occurred.
 - Note in article the discussion regarding who is responsible to know about the events and report them. Depending on the type of event, possible time frames are up to 18, 29 or 36 months.
- Name of qualified beneficiaries, by name or by status.
 - For example, it is acceptable to send the notice to “Covered Employee and/or Spouse/Dependents (if any).”
- Description of what COBRA coverage is available.
- Premium amount for coverage(s).
 - The premium amount that the QB will be required to pay, including the 2-percent administration fee, is an additional requirement that must be in the notification.
- Due date of premium(s).
 - This is the day of the month the premium is due. Following this date, the QB will have a minimum 30-day grace period to make the payments for that month. That is, January payments can be due on the first of January; however the QB will have 30 days following to have the payment postmarked, or no later than Jan. 31.
- Date coverage will be lost.
 - This is the last date the covered employee will be on the plan as an active participant.
- Last date to elect.
 - The QB has 60 days to elect COBRA coverage. This time frame ends on the date that is 60 days from either the loss of coverage date or the date of the notice; whichever is later.
- When COBRA coverage will end.
 - This date could change if a secondary event occurs that could extend the allowable time on COBRA. Events that allow 18 months of coverage are:
 - 1) termination of employment; and
 - 2) reduction of hours.Events that provide 36 months of coverage are:
 - 1) divorce;
 - 2) dependent ceasing to be a dependent;
 - 3) death of the employee; and
 - 4) Medicare entitlement.

Disability can provide 29 months of COBRA coverage if certain criteria are met.

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Content of Qualifying Event Notices, *continued*

- Who can elect, including an explanation about independent election rights and the right to elect on behalf of other QBs.
 - This includes information regarding who is eligible for COBRA coverage.
- How to elect, including a COBRA election form.
- Explanation of when payments are due, including rights to pay on a monthly basis and initial 45-day time frame.
 - This includes an explanation about partial payments and the non-sufficient fund policy.
 - In addition, the notice explains that during the election period the QB may have been removed from the plan and will be retroactively reinstated upon receipt of a timely election and payment.
- Explanation about extending time on COBRA, including specifics on additional time for disability.
 - Specific requirements are listed that must be met to receive the Social Security disability extension.
- Procedures and form to report a COBRA event.
- Importance of COBRA and HIPAA, including consequences of failing to elect.
 - This informs the QB that the election or non-election of COBRA coverage could have implications for future rights and the ability to obtain health coverage.
 - The notice specifically explains pre-existing condition exclusion periods and how a gap of more than 63 days could affect future coverage.
- Reference to the summary plan description (SPD).
 - The election notice does not provide all plan rights so the QB is directed to review the SPD, plan booklet or certificate for more specific plan information.
- Reminder to keep address current with the plan administrator.
- Description of what could end COBRA coverage.
 - Several events could end COBRA coverage for a QB including:
 - 1) COBRA expiring;
 - 2) Medicare entitlement;
 - 3) other coverage under any other group health without any pre-existing condition limitations;
 - 4) premium payments not made on a timely basis;
 - 5) employer ceasing to provide any group health plan; and
 - 6) QB is no longer deemed disabled by Social Security.

Should coverage terminate before the end of the allowable time, a termination notice is required. 