



COBRA Frequently Asked Questions (for employers)

What is COBRA?

COBRA stands for the Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA is a federal statute that requires employers to provide employees and their dependents who lose coverage under a group health plan maintained by the employer, as a result of a Qualifying Event, with an opportunity to continue group health insurance coverage.

What employers are subject to COBRA?

Employers who employed 20 or more employees on more than 50% of the business days in the prior calendar year are subject to COBRA.

Small-Employer Plans, church plans, and governmental plans are not subject to COBRA.

What is a “Health Plan” under COBRA?

A Health Plan is a plan maintained by an employer or employee organization to provide health care to individuals who have an employment-related connection to the employer or employee organization or to the families of such individuals. Individuals with an employment-related connection include Employees, former Employees, and their family members.

A plan is considered to provide health care whether it does so directly or through insurance, reimbursement, or other means, and whether it does so through an on-site facility or cafeteria or other flexible benefit arrangement.

Health care includes diagnosis, cure, mitigation, treatment, or prevention of disease, and any other services or care for the purpose of affecting any structure or function of the body. Plans covering the following are generally considered Health Plans under COBRA:

- Medical or surgical care,
- Prescription drugs,
- Dental care,
- Vision care,
- Hearing care, and
- Drug and mental health treatment.

Health flexible spending arrangements (FSAs) are also Health Plans. Some Health Savings Accounts (HSAs) may be considered health plans, but the IRS has indicated that COBRA does not apply to these accounts.

Pursuant to COBRA, who is a Qualified Beneficiary?

A Qualified Beneficiary (QB) is any individual who, on the day before the Qualifying Event, is covered under a Health Plan by virtue of being on that day either:

- An Employee,
- A spouse of a covered Employee,

- A dependent child of the covered Employee, or
- Any child who is born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage.

Each Qualified Beneficiary has an independent right to elect COBRA. For example, if an employee and his spouse were covered under the Health Plan on the day before the Qualifying Event, the spouse may elect COBRA even if the Employee declines coverage.

Who is NOT a Qualified Beneficiary under COBRA?

In rare cases, individuals covered under a Health Plan or under COBRA continuation coverage are not Qualified Beneficiaries.

- Domestic partners do not meet COBRA's definition of spouse or dependent. Where an employer offers domestic partner benefits, even where state law recognizes domestic partners, domestic partners are not Qualified Beneficiaries. Therefore, employers offering domestic partner benefits should clarify within their summary plan description and COBRA notices whether they will voluntarily provide COBRA rights to domestic partners. An employer should seek approval from its insurance carrier or stop loss carrier prior to voluntarily expanding the scope of its definition of COBRA Qualified Beneficiary to include domestic partners.
- Where a Qualified Beneficiary covered under COBRA adds a spouse or dependent during a Health Plan's open enrollment period, that spouse or dependent is not a Qualified Beneficiary. While the spouse or dependent is covered under COBRA, he or she does not have independent rights under COBRA. Therefore, if the Employee terminates coverage prior to the end of the maximum COBRA coverage period, the non-Qualified Beneficiary spouse or dependents will lose coverage since they do not have an independent right to continue COBRA.

What is a COBRA Qualifying Event?

A Qualifying Event (QE) is any of a set of specified events that occur while a Health Plan is subject to COBRA and that results in a loss of coverage to a covered employee, covered spouse of a covered employee, or a covered dependent child of a covered employee.

The specified events are:

- Termination of employment or reduction of hours of the covered employee (other than by reason of gross misconduct),
- Death of a covered employee,
- Divorce or legal separation of a covered employee from the covered employee's spouse,
- A covered employee becoming entitled to Medicare benefits,
- A dependent child ceasing to be a dependent child under the terms of the Health Plan, and
- An employer's filing of bankruptcy under Chapter 11 with respect to a retired covered employee, any spouse, surviving spouse, or dependent child of such a covered employee, if on the day before the bankruptcy, the spouse, surviving spouse, or dependent child were covered under the plan.

A Qualifying Event must a) result in a loss of coverage and b) be a result of one of the above specified events.

How long are Qualified Beneficiaries (QBs) able to remain on COBRA coverage?

The following Table lists the duration of COBRA coverage for each COBRA Qualifying Event.

<i>Length</i>	<i>Affecting</i>	<i>Reason For Loss Of Coverage</i>
18 Months	All QBs	Termination or Reduction in Hours, unless for Gross Misconduct
29 Months	All QBs	11 month extension of 18 Month Termination or Reduction in Hours coverage upon certain Social Security determined disabilities
36 Months	Spouse and Dependents	Death of Employee, Divorce of Employee, Entitlement of Employee to Medicare, or Child Ceasing to be a Dependent
36 Months	Spouse and Dependents	Bankruptcy, where retiree dies after Bankruptcy Date, for Retiree's Surviving Spouse and Dependents
For Life	All QBs	Bankruptcy, for Retiree or Surviving Spouse at Bankruptcy Date

What are the actual costs involved in providing COBRA?

Statistics show that claims of COBRA continues typically average 150% higher than the claims of active employees, even though a COBRA continuee can only be charged 102% of the applicable, total plan premium. In other words, employers and their active employees generally bear the brunt of the higher health care costs attributable to COBRA continuees.

COBRA's costs should not be measured only in terms of the administrative costs incurred by employers because of COBRA's requirements (*e.g.*, postage, salaries, general overhead, etc.). The greater cost is attributable to the health care claims of COBRA continuees and the cost of health care benefits that are continued only because of improper COBRA administration.

Who is legally responsible for COBRA compliance?

COBRA is legislation primarily directed at employers. Thus, employers, and not their insurers or third party administrators, are primarily liable for COBRA violations.

Therefore, even if you have outside help with your COBRA administration, it is critical for you to review your COBRA administrative systems regularly to ensure that either your company, one of its service providers, or its insurer is handling COBRA properly.

What is the General “Initial” Notice?

The General or Initial Notice informs the recipient of the general outline of COBRA and specifically informs them about COBRA's detailed rules which could apply if the recipient loses group health coverage at some later date.

COBRA rules require that a General COBRA notice be furnished to each covered employee and covered spouse not later than:

- 90 days after the employee (and spouse, if any) first becomes covered under the plan, or

- The first date upon which the plan administrator must furnish an Election Notice to the employee, spouse, or dependent

What is the best method of distributing the General “Initial” Notice?

The DOL has stated that a first class mailing of the General COBRA Notice, addressed to the recipient's last known address, satisfies the General COBRA Notice requirement. Furthermore, employers need only prove that the Notice was sent: not that the addressee received, read, or understood the Notice.

While certified mail is also a mailing option, it is more costly than first class mail or the proof of mailing certificates system and can, under certain circumstances, work against the employer. This is because a returned, undelivered certified mailing actually serves as proof that the addressee did not receive the General COBRA Notice. Therefore, most commentators advise that certified mail not be used to send General COBRA Notices.

What qualifies as gross misconduct under COBRA?

While COBRA does not require an employer to extend COBRA continuation rights to an employee, his spouse, or dependents where the employee's termination was due to gross misconduct, COBRA does not define gross misconduct. In addition, federal courts have not provided a clear standard for determining what constitutes gross misconduct. Court decisions have referred to gross misconduct as “intentional, wanton, willful, reckless, or deliberate.” An employee's failure to follow an employer's policy is often not conduct that rises to the level of gross misconduct.

An employer should consult with an attorney before refusing to offer an employee and his covered dependents COBRA continuation coverage based on the employer's determination that the employee was terminated as a result of gross misconduct. If an employer mistakenly determines that an employee's termination was a result of gross misconduct, the employer will be liable for failing to offer COBRA.

What is an Election Period under COBRA?

Individuals that experience a Qualifying Event must be provided with an opportunity to elect COBRA continuation coverage at any time during the Election Period. An Election Period must be no less than 60 days.

The Election Period ends on the later of sixty days following: a) the date coverage under the plan terminates or b) the date on which the Qualified Beneficiary receives notice from the Plan Administrator.

A Qualified Beneficiary's election is deemed to be made on the date it is sent to the employer or Plan Administrator.

Who is the Plan Administrator under COBRA?

The Plan Administrator is the person designated in the plan instrument or plan document. If no Plan Administrator is designated, then the Plan Administrator is the plan sponsor (usually the employer). Where an employer engages the services of a third party to administer its COBRA obligations, that third party may be the Plan Administrator. If an employer has hired a Plan Administrator, the Plan Administrator's name and its contact information is included within the General Notice. Covered Employees and their covered dependents will be directed to contact the Plan Administrator with questions pertaining to COBRA and are required to provide the Plan Administrator with notice of Qualifying Events (i.e. divorce, eligibility for Medicare, etc.).

What COBRA administration services does CGI provide?

COBRA administration is more than just taking care of those people "on COBRA"; it is a total process of notifying, tracking, and documenting all facets of compliance with this highly complex law. If sued or audited by the regulators, an employer must be able to prove that it has properly complied with COBRA's

rules, or else be subject to substantial penalties, up to and including the payment of claims for the aggrieved individual.

As your COBRA Plan Administrator, we manage every detail of COBRA eligibility, notifications, billing and premium collection. By utilizing the most advanced specialized COBRA software system, we ensure a seamless and compliant administrative process that automates required eligibility tracking. In addition, we differentiate ourselves from other administrators by providing additional guidance to our clients in managing the complicated nuances of COBRA and its interaction with other regulatory obligations.

What does CGI charge for COBRA administration services?

As a CGI benefits client, there is no charge for all of the COBRA required notification, billing and premium collection costs. The only cost involved is the 2% administrative fee, which is paid for by the COBRA participant if they elect COBRA.

What if our company's health plan includes a Health Reimbursement Arrangement (HRA)?

Health Reimbursement Arrangements (HRAs) are considered a COBRA eligible benefit and should be offered to COBRA participants if available to active employees. CGI will assist employers in determining the value of the HRA for COBRA purposes by utilizing an actuarial method in addition to a past-cost method, depending on the situation.