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Health Insurance After Employment: COBRA

YOUR LEGAL RIGHTS

1.

What is COBRA?

Many workers have health insurance through their jobs. (See our Fact Sheet Health Insurance During Employment for more information.) This insurance is usually a group health plan, which means that the people who belong to the group (for example, all of the workers at a particular job) are entitled to the benefits that the insurance plan provides, such as paying for hospitalizations or physician care and reimbursements for prescription medicines. In 1985, Congress passed the "Consolidated Omnibus Budget Reconciliation Act" (COBRA), which gave workers who are terminated or whose hours are reduced the option to buy group health coverage for themselves and their families for limited periods of time. (California passed a similar law known as "Cal-COBRA.") Under COBRA, the group plan health insurance plan made available to terminated workers provides the exact same benefits as they would receive if they were still a member of the group, except that the employees have to pay the employer's cost of providing the benefits. This Fact Sheet will help you understand your rights and obligations under COBRA.

2.

Do I qualify for health insurance after I lose my job? What about my family?

Unless you work for the government or a church, and as long as you are employed by a business with 2 or more employees, you are a "covered employee" and eligible to continue your group health coverage. There is no requirement that you work for your employer for a certain amount of time. Your employer must also offer you a COBRA extension even if you are also covered by another policy, such as a spouse's policy through his or her job.

3.

Am I entitled to COBRA no matter how my employment ended?

It depends. You are entitled to continued coverage if your job loss resulted from a "qualifying event." Qualifying events are:

- an employee loses his or her job (for reasons other than "gross misconduct"— meaning the employee did something bad to the employer on purpose, like stealing company property or committing fraud);
- employee quits or retires, but is not eligible for Medicare;
- employee's work hours are reduced.

Spouses, registered domestic partners, and dependant children of employees are all eligible for continuation coverage if they were enrolled in the employee's job's group health plan at the time of the qualifying event. They can elect continued coverage under the employer's group health plan when the *employee*:

- loses a job, retires, or receives reduced hours;
- dies;
- divorces or is legally separated from a spouse;
- becomes eligible for Medicare (sometimes, an employer's insurance coverage will end for the employee *and* the employee's family when the employee qualifies for federal health coverage under Medicare due to age or disability); or
- when the employee's child no longer qualifies as a "dependent child" (usually when they turn 18 and/or move out of the employee's home).

4.

How long does COBRA coverage last?

Coverage starts on the day of the qualifying event and lasts for 36 months (18 months under federal COBRA and an additional 18 months if you qualify for Cal-COBRA) for you, your spouse, your registered domestic partner, and your dependent children.

5.

How is my COBRA affected if I left work due to a disability?

If you leave work because of a disability, and the Social Security Administration (SSA) finds you to be disabled and entitled to Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), you are eligible for an additional 7 months of coverage from the previous maximum of 29 months of Federal COBRA for a total of 36 months. If you are receiving Social Security benefits and are disabled, you should be entitled to Medicare coverage at the end of the 36-month COBRA extension. Note: People who are disabled *must* notify their COBRA administrator of their determination of disability by SSA within 60 days of the disability determination notice in order to qualify for the 7-month extension.

6.

How may COBRA be discontinued?

Continuation of health coverage will end or be cut short if any of the following occur:

- You reach the last day of maximum coverage.
- Premiums are not paid on a timely basis.
- The employer ceases to maintain any group health plan.
- The employer goes out of business.
- You obtain coverage through another employer's group health plan that does not contain any exclusion or limitation with respect to pre-existing conditions of a beneficiary. (e.g., eligibility under a spouse's group health plan does not count.)
- A beneficiary is entitled to Medicare benefits.

7.

What do I have to do to sign up for COBRA continuation coverage? What is my employer required to do?

Employers must furnish a written notice of COBRA rights when the employee enrolls in the group health plan. Also, you should check your policy's Summary Plan Description (SPD) for a notification of your COBRA rights. You should have received the SPD shortly after enrolling in the employer's group plan.

When the qualifying event occurs, for example when the employee is terminated or quits, the employer must notify the COBRA administrator within 14 days, and the administrator then has 30 days to notify the worker of their eligibility. The employee, their spouse, or dependent children then has 60 days to elect continuation coverage and send in the first payment. The 60-day clock starts ticking on either the day of the qualifying event (e.g., the termination or resignation date) or the date that notice of eligibility is given by the COBRA administrator to the worker, *whichever is later*.

Because COBRA is so complicated, many employers hire "COBRA administrators" to manage their employees' COBRA extensions. (Smaller employers simply handle COBRA extensions within their own Human Resources departments, in which case the employer will be considered the "COBRA administrator.")

8.

How much will I have to pay for continuation coverage?

Under COBRA, the administrator is allowed to charge the terminated worker for the full cost to the employer of the monthly coverage *plus* a 2% administration fee. So if, for example, your coverage costs $300.00 a month (i.e., the employer had to pay the health insurance carrier—such as Blue Cross—$300.00 a month for you to be in the group health insurance plan), you have to come up with a total of $306.00 a month to continue your health coverage.

The first bill is often higher than the following bills. As mentioned above, workers have up to 60 days to elect continued coverage, but you have to pay for every month of coverage even if it's already passed. For instance, if a worker were terminated on July 1, she would have until September 1 to elect coverage. But if she waits until September 1 to elect to continue her coverage, two months (July and August) of coverage have already gone by, and the administrator will bill her for those two months. The first bill, if her group health plan costs $300.00 per month, could be for $918.00: $612.00 for July and August, plus $306.00 for coverage for the upcoming the month of September.

Continuation may be more expensive if you work for an employer that only has between 2 and 19 employees. That's because the federal

COBRA laws do not cover small employers with less than 20 employees. Instead, the California COBRA law governs them. Cal-COBRA administrators are allowed to charge up to 110% of the price of coverage: the full price of the insurance plus a 10% administration fee. That means that if your group plan costs the employer $300.00 per month, you will be charged $330.00 per month for continued coverage.

COBRA coverage can be even more expensive if the worker is disabled and receives an extension of coverage. Administrators are allowed to charge 150% of the cost of coverage per month for the disability extension. So if the total cost of the coverage is $300.00 per month, a disabled worker will have to come up with $450.00 per month to pay for their COBRA disability extension.

9.

Why would I want to pay for COBRA coverage rather than get my own insurance policy?

The cost of extending group coverage through COBRA is often much cheaper than going out and purchasing the *same* coverage under an individual health insurance plan.

For further information about your employment rights, contact the Workers' Rights Clinic.

Disclaimer

This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society–Employment Law Center cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.