

An Updated Guide to COBRA

(Consolidated Omnibus Budget Reconciliation Act of 1986)

**By Bonnie Curran, Human Resources Consultant
January 2009**

**Based on original works by Richard Stokes,
Human Resources Consultant**

An Updated Guide to COBRA

(Consolidated Omnibus Budget Reconciliation Act of 1986)

By Bonnie Curran, Human Resources Consultant
January 2009

**Based on original works by Richard Stokes,
Human Resources Consultant**

MTAS OFFICES

Knoxville (Headquarters)..... (865) 974-0411
Johnson City (423) 854-9882
 (423) 282-0416
Nashville (615) 532-6827
Jackson (731) 423-3710
Martin (731) 587-7055

www.mtas.tennessee.edu

The Municipal Technical Advisory Service (MTAS) was created in 1949 by the state legislature to enhance the quality of government in Tennessee municipalities. An agency of the University of Tennessee Institute for Public Service, MTAS works in cooperation with the Tennessee Municipal League and affiliated organizations to assist municipal officials.

By sharing information, responding to client requests, and anticipating the ever-changing municipal government environment, MTAS promotes better local government and helps cities develop and sustain effective management and leadership.

MTAS offers assistance in areas such as accounting and finance, administration and personnel, fire, public works, law, ordinance codification, and wastewater management.

MTAS houses a comprehensive library and publishes scores of documents annually.

MTAS provides one copy of our publications free of charge to each Tennessee municipality, county and department of state and federal government. There is a \$10 charge for additional copies of “An Updated Guide to COBRA.”

Photocopying of this publication in small quantities for educational purposes is encouraged. For permission to copy and distribute large quantities, please contact the MTAS Knoxville office at (865) 974-0411.



BACKGROUND AND CLIMATE

The year was 1985 and America faced a huge budget deficit. Add to that, more and more Americans were finding themselves uninsured and being denied care at their community hospitals. To address the growing budget deficit and uninsured rate, Congress enacted the Consolidated Omnibus Budget Reconciliation Act (COBRA) in 1986.

LANDMARK FEDERAL LEGISLATION

Congress passed COBRA on April 7, 1986. Among other things, COBRA amended the Employee Retirement Income Security Act (ERISA), the Internal Revenue Code, and the Public Health Service Act (PHSA), all of which mandated that most group health plans offer a continuation of health insurance when employees and beneficiaries would otherwise lose group health coverage.

The COBRA statute contains provisions that bridge the gap to group health coverage created when employees experience certain life changes. COBRA allows qualified employees and beneficiaries the ability to continue group health insurance after losing coverage due to certain “qualifying events.” Prior to this statute becoming law, employees and their dependents were at risk of losing group health coverage when the employee carrying health insurance changed jobs, divorced, or experienced other qualifying events. COBRA requires a temporary continuation of health benefits at the group rate, which generally is the entire cost of continuation coverage, including the employee contribution plus the employer contribution plus any administration fee.

INTENT OF LEGISLATION

While the intent of the legislation seemed simple — give workers the chance to continue their health insurance under circumstances that would normally cause them and their dependents to lose coverage — the result was cumbersome legislation that requires

health plan administrators to perform a complex series of actions to ensure compliance with COBRA regulations. Employers and plan administrators are urged to use caution administering COBRA and to document carefully the timeliness of all notices sent or received.

COBRA RULES AND REGULATIONS

COBRA has been formally amended nine times since 1986. These major amendments include:

- Omnibus Budget Reconciliation Act of 1986;
- Tax Reform Act of 1986;
- Technical and Miscellaneous Revenue Act of 1988;
- Omnibus Budget Reconciliation Act of 1989;
- Omnibus Budget Reconciliation Act of 1990;
- Omnibus Budget Reconciliation Act of 1993;
- Small Business Job Protection Act of 1996;
- Health Insurance Portability and Accountability Act of 1996; and
- Trade Act of 2002

In addition, the IRS has issued a number of rulings, guidance and clarifications dealing with COBRA over the years. In May of 2003 the IRS came out with the long-awaited proposed regulations, which did not differ drastically from the final rules that were released in May of 2004.

Final Rules on COBRA Notice Procedures (May 26, 2004) were effective for most plans Jan. 1, 2005. These new final rules

required plan administrators to take the following steps:

- Revise the initial general COBRA notice;
- Revise COBRA election forms;
- Revise employer-provided notice of qualifying event;
- Update applicable summary plan descriptions;
- Update related plan documents; and
- Add two additional notices to their COBRA administration

PHSA: Public Health Service Act.

The PHSA contains the provisions of the Consolidated Omnibus Budget Reconciliation Act that govern continuation of coverage under government-sponsored group health plans.



COBRA AND LOCAL GOVERNMENT HEALTH PLANS

While ERISA generally does not govern the administration of local government health plans, amendments to PHSA provide that local governments offer the continuation of coverage. State and local government health plans are subject to the continuation provisions contained in PHSA but not the provisions contained in ERISA or the Code. PHSA provides virtually identical coverage requirements with the exception of financial penalties or an enforcement scheme. However, courts do look to ERISA-COBRA cases for guidance with PHSA-COBRA administration and rulings.

ELIGIBILITY FOR COBRA COVERAGE

To be eligible for COBRA continuation coverage, a qualified beneficiary must be enrolled in the employer's group health plan on the day before the qualifying event takes place. Simply stated, if a person is not enrolled in a plan, there is no coverage to lose. But once a person is a qualified beneficiary, he or she may be able to enroll previously non-covered individuals. A "qualified beneficiary" can be one of the following:

- A "covered employee" defined as a current or former employee (including self-employed persons, independent contractors and other non-traditional employees) covered under a group health plan;
- The spouse of a covered employee; or
- The dependent child of a covered employee.

Two groups of people who can never be qualified beneficiaries are (1) non-resident aliens with no U.S. source of income and (2) individuals who are not otherwise qualified beneficiaries who become covered under a group health plan because of another qualified beneficiary's election. Any relative of these non-resident aliens also is not a qualified beneficiary solely because of the relationship to the non-resident alien.

QUALIFIED BENEFICIARY

A qualified beneficiary (QB) may be any employee, former employee, spouse or dependent child who was covered under the group plan on the day before the qualifying event date. In certain situations, a retired employee and his or her dependents may also be considered QBs.

QBs may include:

- Employee (current and former);
- Employee's spouse;
- Employee's dependent child (includes QMCSO*);
- Employee's adopted child born to or placed for adoption during COBRA period; and
- Retired employees and dependents.

Qualified Beneficiary (QB)

Qualified beneficiaries are individuals who are eligible to continue coverage based on certain qualifying events. Typically, this is the employee as well as any covered dependent(s) such as a spouse or child(ren). For COBRA purposes, each covered person is considered a separate QB.

*Qualified Medical Child Support Order

The regulations specify that self-employed persons, agents, contractors and corporate directors are covered employees. However, these people are considered covered employees only if the employer maintains a plan covering traditional, common-law employees.

COVERED PERSONS WHO ARE NOT QUALIFIED BENEFICIARIES

Certain individuals may be added to a qualified beneficiary's health plan coverage but not be entitled to the same rights as a qualified beneficiary. For example, a former dependent child of a covered employee could enroll under a group health plan as a qualified beneficiary, marry, opt to cover a new spouse, have a child and opt to cover the child all within 36 months of COBRA continuation coverage. Thus an employee's grandchild could be enrolled in an employer's group health plan under COBRA but not as a qualified beneficiary. The only way the grandchild could become covered is if the former dependent child, a qualified beneficiary, so elects. The former dependent child's new spouse would not have any election rights nor would the grandchild.



Another group of individuals who could become covered under COBRA continuation coverage but who are not qualified beneficiaries are former qualified beneficiaries. For example, employee Smith is married and terminates employment but elects to continue only single coverage. His spouse declines to continue any coverage. During a subsequent open-enrollment period, Smith enrolls his spouse. If the couple is divorced within the 18-month continuation period, Smith's spouse could not continue health benefits because she is not a qualified beneficiary.

COBRA PREMIUM

COBRA Premium is the amount the QB pays for continuation coverage. It **USUALLY** is usually equivalent to the total employer premium plus a 2 PERCENT administration charge.

According to direct information from the U.S. Department of Health and Human Services:

Second qualifying events may include the death of the covered employee, divorce or legal separation from the covered employee, the covered employee becoming entitled to Medicare benefits (under Part A, Part B or both), or a dependent child ceasing to be eligible for coverage as a dependent under the group health plan. The following conditions must be met in order for a second event to extend a period of coverage:

- (1) The initial qualifying event is the covered employee's termination or reduction of hours of employment, which calls for an 18-month period of continuation coverage;*
- (2) The second event that gives rise to a 36-month maximum coverage period occurs during the initial 18-month period of continuation coverage (or within the 29-month period of coverage if a disability extension applies);*
- (3) The second event would have caused a qualified beneficiary to lose coverage under the plan in the absence of the initial qualifying event;*
- (4) The individual was a qualified beneficiary in connection with the first qualifying event and is still a qualified beneficiary at the time of the second event; and*
- (5) The individual meets any applicable COBRA notice requirement in connection with a second event, such as notifying the plan administrator of a divorce or a child ceasing to be a dependent under the plan within 60 days after the event.*

If all conditions associated with a second qualifying event are met, the period of continuation coverage for the affected qualified beneficiary (or beneficiaries) is extended from 18 months (or 29 months) to 36 months.

QUALIFYING EVENTS REQUIRING COBRA

The following list of qualifying events should trigger the COBRA notification process.

- Death of a covered employee;
- Voluntary or involuntary termination of the covered employee's employment (except for gross misconduct);
- Reduction of hours worked by covered employee;
- Divorce or legal separation of the covered employee from the employee's spouse;
- Employee's entitlement to Medicare;
- A dependent child ceasing to be a dependent under the eligibility requirements (i.e., age, student status, marriage); and
- An employer's bankruptcy.

SECOND QUALIFYING EVENTS

A second qualifying event is a qualifying event that occurs during the 18-month period following the date of any employee's termination or reduction in hours. The beneficiary of that second qualifying event will be entitled to a total of 36 months of continued coverage. The period will be measured from the date of the loss of coverage caused by the first qualifying event.



COBRA PREMIUMS

COBRA premiums typically are set at 102 percent of the total cost of the plan. The plan can include the premium costs paid by employees and the employer, plus an additional two percent administration fee.

Example COBRA Rates

Note: These numbers are hypothetical and have no relation to actual COBRA premiums. This is for illustration purposes only.

Active Employee Rates

(Individual Health Coverage)

Employee Pays: \$100 per month

Employer Pays: \$500 per month

Total Cost: \$600 per month

COBRA RATES (Individual Health Coverage)

Employee Pays: \$600 per month plus administration fees totaling \$612 per month. This includes employee and employer contributions plus a COBRA administration fee.

The Employer Contribution: \$500 per month

The Employee Contribution: \$100 per month

Plus a 2 % Administration Fee:

\$12 per month

Total COBRA Cost: \$612 per month

This means group health coverage for COBRA participants usually is significantly more expensive than health coverage for active employees, since the employer usually pays a part of the premium for active employees, and COBRA participants generally pay the entire premium themselves. However, by law coverage under COBRA cannot exceed 102 percent of the actual cost of the coverage to the group plan. The one exception comes in the case of disabled beneficiaries who receive the 11-month extension, in which case the premium can be as high as 150 percent. In the case that a QB is eligible for an additional 11 months (beyond the original 18 months) of COBRA he could be charged up to 150 percent of the cost of the coverage for those additional 11 months.

Nevertheless, continuation of group health coverage under COBRA ordinarily is less expensive than individual health coverage and generally offers a richer benefit with less risk.

The plan must allow employees and QBs to pay the COBRA premiums on a monthly basis and may allow the employee to make payments on another schedule such as quarterly or weekly.

COBRA premiums generally are increased if the costs of health benefits or administration fees increase, but they typically are fixed for at least the coming year.

BENEFITS SUBJECT TO COBRA

Qualified beneficiaries must be offered coverage identical to that available to active employees and their families covered under the group health plan. In other words, a qualified beneficiary generally is entitled to the same coverage he or she had immediately before qualifying for continuation of coverage under COBRA.

If a former employee had medical, dental, vision, and prescription benefits under single or multiple health plans, this person would have the right under COBRA to elect to continue coverage in any or all of those plans. Any change in coverage under the plans for active employees also applies to individuals covered under COBRA, and COBRA participants must be allowed to make the same choices given to non-COBRA participants in the health plan.



DURATION OF COBRA CONTINUATION COVERAGE

Qualifying events are those that cause the qualified beneficiary to lose coverage under the plan.

As shown in the following schedule, qualified beneficiaries generally can continue health coverage for up to 18 months for themselves and their families. **In some cases, coverage is extended to 36 months.**

COBRA coverage can be terminated before these maximum periods if premiums are not paid on time or if the employer ceases to maintain a group health plan for its employees.

Qualifying Event	Qualified Beneficiaries	Maximum Period of Continuation
Termination (for reasons other than gross misconduct)	Employee Spouse Dependent children	18 Months*
Employee enrollment in Medicare	Spouse Dependent children	36 Months
Divorce or legal separation	Spouse Dependent children	36 Months
Death of employee	Spouse Dependent children	36 Months
Loss of dependent child status under plan eligibility rules	Dependent children	36 Months

* In certain circumstances QBs entitled to 18 months of COBRA may become entitled to a disability extension of an additional 11 months (for a total maximum of 29 months) or an extension of an additional 18 months due to the occurrence of a second qualifying event (for a total maximum of 36 months).

Some plans allow COBRA participants to convert group health coverage to an individual policy when the COBRA continuation period ends. The option to enroll in a conversion health plan must be given at least 180 days before COBRA coverage ends and may vary by state and type of plan offered.



OPEN ENROLLMENT/TRANSFER PERIOD

Plan sponsors may forget that a change in the benefits under the plan for active employees will apply also to qualified beneficiaries. It is important to note that qualified beneficiaries must be allowed to make the same choices given to non-COBRA beneficiaries under the plan, such as during periods of open enrollment. This means that all COBRA beneficiaries must receive the same opportunity to change plans or enroll in new plans as if they were active employees or plan members.

FMLA AND COBRA

Family and medical leave itself is not a qualifying event under COBRA, even though employers are required by FMLA to maintain group health insurance coverage for employees on leave. If an employee on FMLA leave notifies the organization that he or she does not intend to return to work, however, a COBRA qualifying event may occur.

Some of the notifications described above may not apply if you are administering your COBRA program in house. The bolded notices represent the critical notifications that employers often must design. Sample forms are available through MTAS.

REQUIRED SCHEDULE OF NOTICES

Required COBRA Notices	Responsible Party	Time Frame
General COBRA Notice	Plan administrator to covered employee and spouse	Within 90 days of coverage becoming effective
Consider new hires, open enrollment and special enrollment periods, qualifying events (marriage or addition of domestic partner), implementation of new plan(s), rehires. Consider your cafeteria plans and EAP plans as well.		
Employer Qualifying Event Notice	Employer to plan administrator	30 days after QE
Includes plan information, covered employee, qualifying event and date of qualifying event. Employers have 30 days following date of QE to notify plan administrators. Plan administrators have 14 days following notice of QE to notify QBs. Employers who act as plan administrators have 44 days from the date of the event to notify QBs.		
Employee Qualifying Event Notice(s)	Employee or qualified beneficiary to plan administrator	60 days after QE
Plan sponsors should make sure a reasonable written procedure is in place for employees and QBs to follow at the time of a QE. Employees and QBs then have the responsibility to notify plan administrator within 60 days of a QE. Employees' and QBs' failure to follow the reasonable notice requirements may result in denial of continuation of coverage.		
Election Notice	Plan administrator to covered employees and QBs	14 days after notice of QE or 44 days (for some QEs)
This is the actual offering of COBRA, which provides the employee and QBs the opportunity to elect coverage.		
Notice of COBRA Unavailability	Plan administrator to employees and beneficiaries who provide notice of QE	Same as election notice
New notice required by the May 26, 2004, Final Notice Rules. This notice must be sent when a plan determines that a QB is not eligible for COBRA.		
Notice of Early Termination of COBRA	Plan administrator to covered employees and QBs	As soon as practicable once termination of coverage is determined by plan administrator
New notice required by the May 26, 2004, Final Notice Rules. This notice must be sent to notify QBs of a termination of benefits if benefits terminate earlier than the full COBRA period. In some cases this may be combined with HIPAA Certificate of Credible Coverage, which also is required upon termination of benefits.		



GENERAL COBRA NOTICE – INITIAL NOTICE

The initial notice usually is the employee's and QB's first notification of COBRA under a group health plan. It typically occurs at the time coverage begins and lets a QB know that he or she loses coverage due to certain qualifying events and that COBRA would be offered.

The plan administrator must send the notice to **the employee and spouse** within 90 days of new coverage. This notice is commonly issued in the plan's Summary Plan Description (SPD), but the employer must ensure the plan's SPD meets timing guidelines and contains minimum requirements of the notice distribution rules. Employers may want to consider posting the SPD on their Internet/intranet site as well.

The general notice must be addressed to both employee and spouse. If the spouse resides at a separate address, a notice should be sent separately to the spouse. If dependents reside in a different household, a separate notice also should be sent to those dependents residing separately. If a spouse's coverage becomes effective on a different date than that of the employee, a separate notice must be sent to the spouse.

Hand delivering the notice to employees is acceptable but does not meet the requirements for spousal notification procedures. If an employee or spouse experiences a qualifying event within 90 days of being covered and the general notice has not been sent, it should be sent out at the same time as the election notice. If administrators are using a generic notice they must be sure to include the name and specific contact information of the person whom the qualified beneficiary may contact with further questions and request additional plan information.

 DOL MODEL AVAILABLE — YES

EMPLOYER AND PLAN ADMINISTRATOR QUALIFYING EVENT NOTICE

Must be sent from **employer to plan administrator** within 30 days after the qualifying event and must contain information about the plan, covered employee, and qualifying event, including type and date of event. Employers have 30 days following the date of the QE to notify plan administrators. Plan administrators have 14 days to then notify the QBs, and if the employer is also the plan administrator the notice must be provided within 44 days of the QE.

 DOL MODEL AVAILABLE — NO

EMPLOYEE QUALIFYING EVENT NOTICES

Employees and QBs must notify plan administrators of qualifying events. In order for employees and QBs to understand their responsibility employers must ensure that employees and QBs are notified of the "reasonable procedures" for QBs to follow when furnishing the notice(s). It is advisable for employers and plan administrators to include these notice requirements in the summary plan description and general notice (if sent separately). It also is advisable to remind employees frequently of their responsibilities (i.e., notifying plan administrator when there is an address change or QE). Employees and QBs must notify the plan administrator within 60 days of the qualifying event.

 DOL MODEL AVAILABLE — NO



ELECTION NOTICE

Perhaps the most important of all COBRA notices, the election notice, is sent out at the time of the qualifying event and advises employees and QBs of their right to continue coverage under COBRA. In order for this to go smoothly, the preceding employee qualifying event notices should have been applied, and the employee should have notified the plan administrator of the qualifying event (if applicable). The election form generally is several pages long and often broken up into different sections to help with clarity. The election notice should contain all of the information individuals need to make a COBRA election.

The regulations require that the election notice contain the following information:

- Plan name, address, contact information, etc.;
- Qualifying event and date;
- Identification of qualifying beneficiaries either by name or status (statement of independent election rights);
- Date coverage is scheduled to terminate;
- Explanation of how to elect COBRA coverage;
- Description of COBRA coverage;
- Description of circumstances under which coverage may be extended;
- Information and procedures for employees and QBs to provide notice of second QE;
- COBRA premium information;
- Information about importance of current addresses; and
- How to get more information and complete plan information.

The election notice must be sent within 14 days of the event date or loss of coverage by the plan administrator to the covered employees and QBs. In 2004, the new rules solidified the long-standing practice that when the employer is also the administrator of the plan, the notice must be sent within 44 days of the event. This 44-day period, however, applies only to terminations of employment, reduction in hours (can include leave without pay or layoff), death of employee, and employer bankruptcy events. In cases of divorce, legal separation

or dependent ineligibility, the notice must be sent within 14 days of the employer receiving notice.

 DOL MODEL AVAILABLE — YES

NEW NOTICE OF UNAVAILABILITY

One of the biggest changes of the 2004 Final Rules concerns cases of divorce, legal separation, loss of dependent status or the employee's entitlement to Medicare. This new notice, required by the May 26, 2004, final notice regulations, mandates that the plan administrator send to covered employees and QBs a notice that includes an explanation of why an individual is not eligible for COBRA. This also could apply to events that are classified as "second qualifying events."

If a plan administrator receives notice of a qualifying event, or even a second qualifying event, and determines that the individual is not entitled to COBRA or a disability extension, the plan administrator also must provide a notice to the individual explaining the reason for the denial. This notice does not apply to events in which the employer is required to notify the plan administrator such as termination of employment, reduction in work hours, death or enrollment in Medicare. This must be sent out in the same time frame as the plan would have sent the election notice.

The Department of Labor provides examples of triggering events that would require that the new notice of unavailability be sent. Examples include when the employee or QB fails to notify the employer of one of the above events or does not notify the employer/plan administrator in a timely manner. The employer/plan administrator then would be required to send the notice describing the reason for denying continuation of coverage within 14 days.

 DOL MODEL AVAILABLE — NO



NEW NOTICE OF EARLY TERMINATION

This new notice, also required by the May 26, 2004, final notice regulations, mandates that the plan administrator send to covered employees and QBs a notice in the event their COBRA coverage terminates before the maximum COBRA coverage period. The law states that this be sent as soon as practicable.

This notice is sent from the plan administrator to covered employees and QBs and should include the reason for and termination date of health benefits; any rights the QB has to elect alternative group or individual coverage.

An example of the need for a notice of early termination is an employer terminating the health plan which means, in effect, an individual's COBRA coverage would terminate earlier than the full time period for which COBRA was offered to that individual.

 DOL MODEL AVAILABLE — NO

HIPAA

The Health Insurance Portability and Accountability Act of 1996 was passed after COBRA went into effect. HIPAA is not directly related to COBRA although HIPAA does make some key changes to COBRA's continuation of coverage.

HIPAA

The Health Insurance Portability and Accountability Act (1996)

HIPAA'S EFFECT ON COBRA

While HIPAA and COBRA are separate laws, HIPAA does affect COBRA continuation coverage. Effective Jan. 1, 1997, HIPAA made changes to COBRA continuation coverage in the areas of disability extension, definition of qualified beneficiary, and the duration of COBRA continuation coverage.

HIPAA's main purpose was to provide protection against pre-existing condition exclusions if a person avoids a gap in insurance coverage longer than 63 days (including COBRA coverage).

HIPAA made three primary changes to COBRA:

Continuation period — Under HIPAA legislation, disabled individuals (as deemed so under the Social Security Act) are entitled to 29 months of COBRA continuation coverage if they become disabled during the first 60 days of COBRA coverage. HIPAA also ensures that if the individual entitled to the disability extension has nondisabled family members who are entitled to COBRA continuation coverage, those nondisabled family members also are entitled to the 29 months disability extension. Under the prior law, individuals had to be deemed disabled at time of the initial QE in order to qualify for the 29 months.

Coverage termination — HIPAA made a coordinating change to the COBRA rules so that if a group health plan limits or excludes benefits for preexisting conditions but because of the new HIPAA rules those limits or exclusions would not apply to (or would be satisfied by) an individual receiving COBRA continuation coverage, the plan providing the COBRA coverage can stop making the coverage available.

Continuation coverage for children — COBRA rules were revised so that children adopted by the covered employee during the COBRA period are considered QBs.

CERTIFICATE OF CREDITABLE COVERAGE

HIPAA regulations require that employers/plan administrators provide employees losing coverage with a certificate of credible coverage (COC). This certificate shows the length of time the employee/QB was covered and the type of coverage and identifies the individuals covered.



NEW NOTICE OF TERMINATION UNDER HIPAA

The 2004 rules assume that most plans will combine the notice of termination with a HIPAA certificate simply because HIPAA certificates also are required to be issued when an individual loses coverage under a group health plan. This will work assuming the same entity is responsible for both COBRA administration and HIPAA. However, if you are an employer that does not issue both, these would need to be issued separately.

COMPLIANCE AND COMMON AREAS OF LIABILITIES

While this publication is intended to give you a brief overview of COBRA, most human resources professionals know that there are literally endless ways to be considered “non-compliant.”

Here are some tips on sound COBRA administration.

The burden of proof rests on you, the employer. Even if you have outsourced your COBRA function, there still is plenty of room for error. At the end of the day, the courts will want to know if the notice was sent within the proper time and if it contained the legal minimum requirements. Employers are obligated to prove they fulfilled the COBRA notice requirements. If challenged, employers must prove they mailed the COBRA notice(s), not that the notice has been received. Courts have deemed first class mail sufficient for COBRA purposes. A first class mailing is considered received unless it was returned to the sender.

Postage date is key. Timeliness of mailings (on both ends) is based on postmark date. If an employee fails to pay the premium payment on time coverage is subject to termination. However, if the payment was postmarked within the 30-day grace period, the premium should be considered paid. If the employee/QB elects to hand deliver the payment, it must be in your hands (the plan administrator) by the end of the grace period. Sometimes this means the plan administrator receives, opens, and processes the payment after the 30-day grace period has expired. For purposes of counting days, Saturdays and

Sundays count. However, if the last day of the election period ends on a weekend or holiday, you are required to extend the date until the end of the next business day.

Make a good faith effort to communicate. Employers are not required to send monthly billing statements, warning letters or lapse notices. Such notices are considered a courtesy and are not required by law; however, improving communication with current employees and future COBRA QBs can go a long way toward avoiding complaints that can turn into formal grievances.

Remember, QBs have the right to change their minds within their election period. A QB can change his mind and revoke the waiver of coverage at any time during the election period. The waiver is not required by law, but if you provide one be sure to include language indicating that the QB has the right to revoke the initial election at any time during the election period.

Last but not least, be careful when dealing with ex-spouses. An ex-employee cannot waive COBRA continuation rights on behalf of his spouse. The spouse has the individual right to receive COBRA information and make a determination on coverage.

COBRA AUTHORITY AND SAMPLE FORMS

MTAS Human Resources Consultant Richard Stokes has put together several resources, including sample forms. Please visit our Web site at www.mtas.tennessee.edu to search for these items. Additionally, the Department of Labor has a plethora of information, links and resources on compliance relative to COBRA.

COBRA continuation coverage laws are administered by several agencies. The departments of Labor and Treasury have jurisdiction over private-sector health group health plans. The Department of Health and Human Services administers the continuation coverage law as it affects public-sector health plans.



The Department of Labor's interpretive and regulatory responsibility is limited to the disclosure and notification requirements of COBRA.

U.S. Department of Labor
Employee Benefits Security Administration
Division of Technical Assistance and Inquiries
200 Constitution Avenue NW, Suite N-5619
Washington, DC 20210
<http://www.dol.gov>

The Internal Revenue Service, Department of the Treasury, has issued regulations on COBRA provisions relating to eligibility, coverage and premiums in 26 CFR Part 54, Continuation Coverage Requirements Applicable to Group Health Plans. Both the departments of Labor and Treasury share jurisdiction for enforcement of these provisions.

The Centers for Medicare and Medicaid Services offer information about COBRA provisions for public-sector employees. You can contact the centers at:

Centers for Medicare and Medicaid Services
7500 Security Boulevard
Mail Stop S3-16-26
Baltimore, MD 21244-1850
Phone: (410) 786-3000
<http://www.cms.hhs.gov/cobracontinuationofcov/>



THE UNIVERSITY *of* TENNESSEE

MUNICIPAL TECHNICAL ADVISORY SERVICE

The University of Tennessee does not discriminate on the basis of race, sex, color, religion, national origin, age, disability, or veteran status in provision of educational programs and services or employment opportunities and benefits. This policy extends to both employment by and admission to the university.

The university does not discriminate on the basis of race, sex, or disability in its education programs and activities pursuant to the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA) of 1990.

Inquiries and charges of violation concerning Title VI, Title IX, Section 504, ADA or the Age Discrimination in Employment Act (ADEA) or any of the other above referenced policies should be directed to the Office of Equity and Diversity (OED), 1840 Melrose Avenue, Knoxville, TN 37996-3560, telephone (865) 974-2498 (V/TTY available) or 974-2440. Requests for accommodation of a disability should be directed to the ADA Coordinator at the UTK Office of Human Resources, 600 Henley Street, Knoxville, TN 37996-4125.