

COBRA Notice Requirements

Last Updated: May 7, 2013

In May 2004, the federal Department of Labor (DOL) issued final rules regarding the requirements for COBRA notices. These rules affect all covered employers (20 or more employees).

There are many different COBRA notices that are either required or recommended by the federal Department of Labor (DOL); some are the responsibility of the employer, some are the responsibility of the employee and/or Qualified Beneficiaries, and some are the responsibility of the Plan Administrator (or the employer if the employer and Plan Administrator are one in the same).

The following chart lists each of the COBRA notices, the individual responsible for initiating the notice, and important information regarding the purpose and timing of the notice as outlined by the Department of Labor. While not all notices are required in every situation, employers and their Plan Administrators should be familiar with all of them.

Notification Document	Responsible Party	Important Information
General Notice* (previously called Initial Notice)	Plan Administrator	<p>The General Notice must be sent to the covered employee and the covered employee's spouse no later than 90 days from commencement of coverage, or 90 days from the Plan being required to comply, or the first date on which the Plan Administrator is required to furnish a Notice of Qualifying Event.</p> <p>Notices should not be given to newly hired employees prior to their enrolling in the available plan(s).</p> <p>A separate notice does not need to be sent to a covered spouse if the employer's most recent information indicates that the covered spouse resides at the same address as the employee, the notice is addressed to both, and the spouse's coverage commences at the same time. There is no requirement to send the General Notice to any covered dependent child who lives at the same address as the employee or spouse. First-class mail is acceptable, but some method of proof of mailing is recommended.</p> <p>There are approximately 20 points that must be covered in this Notice, including the name and contact information for each of the plan(s). Thus, if an employer has plans with different effective dates, a separate General Notice must be sent to all Qualified Beneficiaries for each plan.</p> <p>All Summary Plan Descriptions (SPDs) must include information about COBRA rights. If the SPD has all of the information required in the General Notice and is distributed within the proper timeframe, the SPD can be given in lieu of the General Notice. However, most SPDs fall short in this area. As a result, we recommend providing a General Notice in addition to the SPD.</p>
Notice to Plan Administrator	Qualified Beneficiary (employee or covered dependent)	<p>Qualified Beneficiaries must advise the Plan Administrator, within 60 days, of one of the following Qualifying Events: a divorce/legal separation, dependent child ceasing to be a dependent child, a Secondary Event, Social Security disability eligibility, or change in Social Security disability status.</p> <p>Employers must have specific written procedures on how this Notice is to be provided and the timeframe in which they must advise Qualified Beneficiaries. Absent written procedures, any form of notice, including verbal notice, provided by the Qualified Beneficiary within the required timeframe will be deemed sufficient. It is recommended that the written procedure be included in the General Notice.</p>

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Notice of Unavailability	Plan Administrator	Upon receipt of a Notice to Plan Administrator submitted by a Qualified Beneficiary, if it is determined that the Qualified Beneficiary is not entitled to continued coverage, the Plan Administrator must provide a written explanation to the Qualified Beneficiary within 14 days of being advised of the occurrence.
Election Notice* (previously called Qualifying Event Notice)	Plan Administrator	<p>When a Qualifying Event has occurred, this Notice must go to each Qualified Beneficiary except that a single notice may go to a covered employee and spouse residing at the same address, or to the covered employee or spouse for each dependent child at the same address. This Notice appraises the Qualified Beneficiaries of their right to elect COBRA.</p> <p>The Employer has 30 days to notify the Plan Administrator of a Qualifying Event. The Plan Administrator then has 14 days to send the Election Notice. Where the Employer is the same as the Plan Administrator, they have a cumulative 44 days to send the Notice. First-class mail is acceptable, but some method of proof of mailing is recommended.</p> <p>There are 14 points that the federal DOL has recommended be covered in the standard notice.</p> <p>FOR CALIFORNIA ONLY: A HIPP Notice* from the California Department of Health must also be included.</p>
Extension Notification	Plan Administrator	<p>Federal COBRA coverage can be extended from 18 to 36 months because of a Secondary Event, Medicare entitlement, or Social Security disability.</p> <p>The DOL strongly encourages employers to inform any Qualified Beneficiary of the new continuation timeframe, monthly rates (which can be 150% of premium in the case of Social Security disability), premium due dates, and reasons coverage can be cancelled prior to the end of the maximum extension period.</p>
Open Enrollment Notification	Plan Administrator	During any Open Enrollment period, COBRA participants must be advised of any plan and/or premium changes and given the same options provided to active employees. For the purposes of Open Enrollment, COBRA Participants are individuals currently enrolled and paying for COBRA, individuals in their 60-day election period, and individuals who have elected, but not yet paid for, COBRA.
Notification of Plan Changes	Plan Administrator	<p>Notification of Plan and/or benefit modification must be communicated to all plan participants, including COBRA participants, as required by the Employee Retirement Income Security Act (ERISA). This Notice must be provided within 60 days after the change has been adopted by the plan.</p> <p>The IRS requires that all Qualified Beneficiaries be notified of any rate change prior to charging them the new rate.</p>
Notice of Early Termination of Coverage	Plan Administrator	If an employer terminates a plan, Qualified Beneficiaries must be informed of the early termination of COBRA coverage, the reason for termination, and description of any rights they have to other coverage (example: California's 18-month continuation requirement).
Right to Convert Notice	Plan Administrator	Must be sent to COBRA participants within 180 days prior to the expiration of their COBRA coverage, if a conversion option is provided under the plan. (The insurance carrier sometimes sends this Notice, but the Plan Administrator is responsible for ensuring it is sent in a timely fashion; therefore, it is recommended to send a notice separate from any notice sent by carrier.)
Notice of Insignificant Premium Underpayment	Plan Administrator	<p>COBRA participants may not have their coverage terminated for underpaying premiums when the shortfall is considered "insignificant" (a shortfall is not significant if it is no greater than the lesser of \$50 or 10% of the required amount).</p> <p>This Notice advises the Qualified Beneficiary of the underpayment amount and the fact that coverage will terminate if balance of payment is not received within 30 days from the date of the notice.</p> <p>Absent this notice, it is presumed the Plan Administrator is accepting the underpayment as payment in full.</p>

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Disclosure to Health Care Provider	Plan Administrator	The Plan Administrator is required to provide complete information regarding a Qualified Beneficiary's coverage status to an inquiring Health Care Provider. In other words, if a Qualified Beneficiary is not covered during the election period, the Plan Administrator must inform an inquiring Health Care Provider that while the Qualified Beneficiary doesn't have current coverage, the coverage will be retroactive if he/she elects and pays for COBRA. The regulations do not require written notice, so any verbal notice of this kind should be documented.

All documents shown above with an asterisk () are included in [Vantaggio HR's COBRA Notice Kit](#).*

Due to the costly fines and penalties that can be assessed and the significant liability for the employer in the event someone does not receive the appropriate coverage, we urge our clients to take COBRA administration very seriously. You should review and update all COBRA procedures and documents on no less than an annual basis, or more frequently as the law changes.

If you do not have a third-party administrator (TPA) for COBRA, please contact Vantaggio for a recommendation. Although we believe that a competent TPA is the best course of action, for our clients who elect to keep this function in-house, we have developed a self-administration kit.

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