



# COBRA COVERAGE AND COVID-19

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**I**t is an unfortunate, but well-known, fact that the COVID-19 pandemic has had a significant impact on the U.S. economy. With the unemployment rate reaching a high of 14.7% in April, it is no surprise that many hard-working Americans lost their jobs.

Given that many Americans rely on those jobs for their health plan coverage, the loss of income, combined with the loss of health coverage, has been and could continue to be catastrophic for many.

On the (somewhat) bright side of things, those who lose their jobs are not always left optionless, as most individuals who lose their employer-sponsored health coverage will generally be eligible for continued coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA).

COBRA provides workers and their families the option to continue group health plan coverage (for a limited period of time) under certain circumstances which cause a loss in group health plan coverage. Further, the employee, rather than a combination of the employee and employer, bears the full cost of coverage when enrolled in COBRA.

From the individual's perspective, the cost alone, especially in the midst of the pandemic and the resulting economic uncertainty makes COBRA a tough sell for former employees, especially those who have other coverage options available.

From an employer's perspective, administering COBRA coverage effectively- and most importantly, correctly is a difficult task. Employers have strict obligations under COBRA. They must provide adequate notice of a "qualifying event" to ensure that their former employees and their dependents are offered coverage.

What makes things even more complicated, is that employers who self-fund their health plan coverage actually serve as both the employer under COBRA (subject to certain obligations), and the plan administrator (subject to a distinct set of obligations) as well.

This nuance only adds to the multitude of obligations and the resulting confusion that an employer must contend with. As is this case with a great many other things, those obligations have become even more difficult to understand and satisfy in the wake of the COVID-19 pandemic.

As mentioned above, COBRA provides the opportunity to continue group health plan coverage if certain criteria are satisfied. Private employers who employ 20 or more workers, are generally subject to COBRA if they offer if a group health plan. COBRA must be made available for the "covered employees" of the employer, and their dependents, if they experience what is known as a qualifying event.

The COBRA regulations provide that a qualifying event may be any of the following occurrences:

- Voluntary or involuntary termination of the covered employee's employment other than by reason of gross misconduct;
- Reduction of hours of the covered employee's employment; Divorce or legal separation of the covered employee from the employee's spouse;
- Death of the covered employee;
- A dependent child ceases to be a dependent under the generally applicable requirements of the plan;

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- A covered employee becomes entitled to benefits under Medicare; and
- An employer's bankruptcy, but only with respect to health coverage for retirees and their families.

While the situations and occurrences which are considered qualifying events may be widely known, what is often overlooked is that the qualifying event must also cause a loss of coverage under the plan. Therefore, if plan coverage does not terminate as a result of the qualifying event, then the individual does not become eligible for an offer of COBRA coverage from the employer.

One instance where this principle is becoming more and more relevant, relates to employees who are furloughed or laid off. Given the economic uncertainty surrounding the COVID-19 pandemic, an unprecedented number of employers have turned to workforce reduction measures such as furloughs and/or layoffs to ensure business continuity.

On the surface, a layoff or furlough may appear to be a qualifying event which triggers an offer of COBRA coverage to the affected individuals. While it may very well be a qualifying event, it very much depends on the facts and circumstances of the given case.

For example, many health plans choose to continue plan coverage in the event of a leave of absence, or even a temporary layoff or furlough. This approach is actually quite common. Although typically outlined within an employer handbook or policy manual, effectively outlining the instances in which plan coverage will be continued

within the plan document can mitigate the risk of a potential dispute with the stop loss carrier.

In essence, the employer must review the plan document to determine whether it properly allows for continued coverage while an individual is furloughed or laid off. If the plan outlines said continuation, then the individual has not experienced a qualifying

event and the employer's obligation to offer COBRA coverage has not been triggered.

Of course, the individual may become eligible for COBRA continuation coverage if they do not ultimately return to work or if their continued plan coverage expires during the maximum coverage period of COBRA.

If that is the case, the employer's obligations would then be triggered, and the employer would be required to offer coverage in accordance with COBRA's requirements. Fortunately for employers, there is some flexibility in the timeframe in which the offer of coverage must be made.

The Internal Revenue Service (IRS) along with the Department of Labor (DOL) issued final rules which extend a number of important benefit plan timeframes. As

it relates to COBRA, plan administrators do have some flexibility as it relates to their obligation to notify the individual of COBRA coverage.

On the other hand, the rules also extend the period in which individuals can elect COBRA coverage, as well as the period of time in which an individual must pay their premiums. These extensions are sure to make administering COBRA eligibility another difficult task for the foreseeable future.

Any way you look at it, COBRA continuation coverage generally imposes a number of obligations on employers, plan administrators, and those who would enroll in COBRA coverage as well.

Determining what those obligations are, how to apply them, and who may be eligible for them is no small feat even without the regulatory and economic uncertainty of the COVID-19 pandemic factored in.

In order to avoid potential compliance issues, as well as mitigating the risk of reimbursement issues down the road, plan administrators should pay special attention to these COVID-19 related issues.

Review the plan document to determine whether individuals furloughed and laid off are eligible to continue coverage under the plan, or alternatively under COBRA. Until the economic consequences of the pandemic dissipate, the complications and nuances associated with COBRA continuation coverage are sure to persist along with it. ■

Kevin Brady, Esq. joined the Phia Group Consulting team as an attorney in the summer of 2019. As a member of the consulting team, Kevin works on general consulting, plan document compliance, contract gap reviews, and general compliance issues.

Kevin attended Oakland University in Rochester, Michigan graduating with his B.A. in History. He earned his Juris Doctor from Michigan State University College of Law in East Lansing, Michigan. While at MSU, Kevin was a member of the Journal of Business and Securities Law and worked in the MSU College of Law Immigration Clinic. After law school, Kevin worked as an attorney representing several healthcare providers in the Midwest. He is currently licensed to practice law in the State of Michigan.

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