

CORONAVIRUS

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Key COBRA Deadlines Extended during the COVID-19 Pandemic

On May 4, 2020, as part of a broader set of extensions intended to provide relief during the pandemic, the Department of Labor (“DOL”) and the Internal Revenue Service (“IRS”) moved back deadlines applicable to the election of continued group health plan coverage pursuant to COBRA that come into play when a person ceases to be eligible for coverage under the group health plan.

COBRA – HOW IT WORKS

COBRA, which is the acronym for the Consolidated Omnibus Budget Reconciliation Act of 1985, is a federal statute that is applicable to employers who had 20 or more employees in the prior year. COBRA allows workers and their families who would otherwise be dropped from an employer’s group health plan to elect to continue that coverage for a limited period of time by making monthly premium payments equal to 102 percent of the employer’s monthly cost of the coverage.

COBRA benefits are available for lost health plan coverage arising from a number of life events, including the death or divorce of an employee. Most importantly, in light of the unprecedented impact of the pandemic on U.S. employment, COBRA rights are triggered by a termination of employment or a reduction in hours that results in an employee no longer being covered by an employer’s health plan. The events that create eligibility for COBRA coverage are referred to as “qualifying events.”

COBRA DEADLINES

Once an employee experiences a qualifying event, several deadlines come into play. First, the plan administrator of the group health plan in which the employee was participating must send a notice to the employee (and a separate notice to the employee’s spouse, if the spouse was also covered under the plan) within 14 days after the plan administrator is notified of the qualifying event. The notice provides information about how to elect COBRA coverage and other rights and obligations applicable to COBRA coverage, including the amount of the monthly COBRA premium.

After the COBRA notice is received, there is a 60-day period in which a person may elect COBRA coverage. A person electing COBRA then has an additional 45 days to make the first COBRA premium payment. All subsequent COBRA premiums must be paid within 30 days after the due date of each premium.

THE GOVERNMENT EXTENSION

The DOL and the IRS extended the COBRA deadlines by disregarding the “Outbreak Period” for purposes of measuring compliance with the deadlines. The Outbreak Period is defined as the period from March 1, 2020 until 60 days after the end of the COVID-19 national emergency (which has not yet been announced), or such other date as the DOL and IRS decide upon.

IMPLICATIONS OF THE EXTENSION FOR EMPLOYERS

Generally, employers should not use the extension to defer sending out COBRA notices. Doing so would typically require an override of procedures that are best left undisturbed. Slippage attributable to a missed or a late COBRA notice can produce penalties and potential liability for medical expenses incurred by the person who did not receive a timely notice.

The real concern for employers, as well as for insurance companies that pay employer health plan benefits, is how the extension of the 60-day election deadline and the 45-day first premium payment will impact the cost of operating a group health plan.

Examples in the DOL/IRS extension guidance posit the end of the COVID-19 national emergency as April 30, 2020, with the Outbreak Period ending 60 days later on June 29, 2020.

Under this assumption, an individual who is laid off during the Outbreak Period has until August 28, 2020 to elect COBRA coverage. What this means is that someone who lost group health plan coverage at the end of March 2020 would have until August 28, 2020 to make their COBRA election and another 45 days (until October 12, 2020) to make their first COBRA premium payment. During that 6½ month period, hospitals, physicians, and other health care providers who contact the administrator of the health plan to ask whether the person is covered by the plan would have to be told that the person has a retroactive period in which to become eligible for COBRA coverage. Claims for medical costs incurred during the 6½ month period would have to be stored by the plan to see whether the individual both elected COBRA coverage and made the first premium payment on time.

The practical implication of giving individuals an extended period of time to put off deciding whether to qualify for COBRA, without having to come out of pocket to pay premiums during that period, is the ability to find out whether they have medical expenses they feel justify the cost of paying for the coverage. Although the current economic conditions weigh in favor of permitting this wait-and-see approach, it comes at the cost to employers of increased complexity of administering medical claims during the extended election and payment period, and then having to pay claims that might not have been the responsibility of the employer’s group health plan, had individuals been required to qualify for COBRA by the pre-extended deadline.

Blank Rome’s [Coronavirus \(“COVID-19”\) Task Force](#) is continuing to monitor the COVID-19 crisis and will provide further updates for employers as they become available.

For additional information, please contact:

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