

How Does COBRA Coverage Work During a Pandemic?

As the coronavirus (COVID-19) outbreak continues to develop, many are feeling its effects in the workplace in the form of reduced hours (furlough) or lay-offs. Some employees have already lost or will lose their group health coverage in the coming weeks. This is a major concern, since about 49% of Americans receive their health insurance through their employer according to the Kaiser Family Foundation (KFF). We all know health insurance is essential during a public health emergency, and the current COVID-19 pandemic adds to the already complex considerations for employers surrounding COBRA. Today, we'll provide answers to the question "How does COBRA work during a pandemic?"

Which Plans Are Eligible for COBRA?

Employers with 20 or more employees in the previous year who sponsor group health plans must comply with federal COBRA regulations. As we've covered previously, most group health plans are subject to COBRA and continuation coverage must be offered when a qualifying event (e.g., reduced hours or termination of employment) results in a loss of a coverage.

Continuation Coverage During COVID-19

Employers are attempting to continue health coverage of employees during this unprecedented worldwide event, even where employees are furloughed or laid-off. However, it's important to know what is permissible in terms of health coverage in these circumstances.

For example, an employer continues an employee's coverage on the group health plan even though the employee's hours have been reduced. Because most group health plans have an "hours worked" eligibility requirement, this could be problematic. It could result in ERISA fiduciary violations and/or denial of claims by the carrier because the employee is not meeting the eligibility requirement. Therefore, if an employer intends to suspend the eligibility requirements, the employer should do a thorough review of the plan to see if the terms allow this action. Based on these findings the employer should contact the carrier (if applicable) to confirm that this practice is permitted and, if necessary, amend the plan to be consistent with administration.

So, if lay-offs or a furlough are inevitable for a business, do other options exist? YES. In order to extend financial assistance to their workers who lose coverage, employers may offer to pay (partially or in full) for their employees' COBRA premiums. This is a great way to help employees with health care costs, but there are several things to consider. Employers need to be careful regarding potential discrimination issues when subsidizing COBRA premiums, and they should also make their employees aware of any conditions attached to subsidized COBRA continuation coverage.

Specifically, if a participant chooses to receive COBRA coverage because

the premiums are subsidized for a certain number of months, that individual will not experience a special enrollment event that allows them to elect different coverage if/when the premium subsidies stop. It also will not extend the maximum COBRA coverage period. When the subsidies stop, the participant may choose to cease payment of their COBRA premiums, but they would lose COBRA coverage without the option to enroll in another plan (e.g., spouse's group health plan).

While COBRA is a federal law, there are certain states with additional COBRA requirements, such as extending the 18-month timeframe that continuation coverage must be offered. Different plans can also have their own terms regarding things like coverage termination date, whether that means coverage is terminated at the time of a qualifying event or at the end of the month in which the qualifying event occurred. It is especially important during this public health emergency to know the terms of the group health plans and any state-specific regulations that may apply.

