



COBRA Deadlines 'Tolled' During Outbreak Period

In light of the incredible circumstances facing employers and employees, the IRS and the Employee Benefits Security Administration (EBSA) have announced relief for many deadlines ordinarily enforced against employee benefits plans.

With respect to COBRA, the notice directs that employers "must disregard the period from March 1, 2020 until sixty (60) days after the announced end of the National Emergency or such other date announced by the Agencies in a future notice (the "Outbreak Period") for all plan participants, beneficiaries, qualified beneficiaries" with regard to both 1) the 60 day election period for individuals to elect COBRA, and 2) the 45 day payment period for making the first premium payment after such election is made. Essentially all running deadlines are tolled (stopped) until 60 days after the end of the outbreak (which is still to be determined). This doesn't mean the employer must pay COBRA premium during this time, rather it means that the employee doesn't lose their chance to elect COBRA for failing to make such an election within 60 days of their termination or reduction in hours. This also applies to late premium payments during the Outbreak Period.

The notice also instructs employers to disregard the usual 30 day notice period (or 60 day for HIPAA special events) for employees requesting special enrollment after experiencing a qualified event during this Outbreak Period. This means employers (and carriers) will have to allow employees to make mid-year changes to existing benefits elections for a period longer than 30 (or 60 days) from the date of the qualifying event.

Examples offered in the notice to illustrate the COBRA rules:

Example: Individual A works for Employer X and participates in X's group health plan. Due to the National Emergency, Individual A experiences a qualifying event for COBRA purposes as a result of a reduction of hours below the hours necessary to meet the group health plan's eligibility requirements and has no other coverage. Individual A is



provided a COBRA election notice on April 1, 2020. What is the deadline for A to elect COBRA?

Conclusion: Individual A is eligible to elect COBRA coverage under Employer X's plan. The Outbreak Period is disregarded for purposes of determining Individual A's COBRA election period. The last day of Individual A's COBRA election period is 60 days after June 29, 2020, which is August 28, 2020.

Example: (COBRA premium payments) On March 1, 2020, Individual C was receiving COBRA continuation coverage under a group health plan. More than 45 days had passed since Individual C had elected COBRA. Monthly premium payments are due by the first of the month. The plan does not permit qualified beneficiaries longer than the statutory 30-day grace period for making premium payments. Individual C made a timely February payment, but did not make the March payment or any subsequent payments during the Outbreak Period. As of July 1, Individual C has made no premium payments for March, April, May, or June. Does Individual C lose COBRA coverage, and if so for which month(s)?

Conclusion: In this Example 3, the Outbreak Period is disregarded for purposes of determining whether monthly COBRA premium installment payments are timely. Premium payments made by 30 days after June 29, 2020, which is July 29, 2020, for March, April, May, and June 2020, are timely, and Individual C is entitled to COBRA continuation coverage for these months if she timely makes payment.

A link to the unpublished notice [is here](#) (note this is expected to be published on May 4).

Employer Action:

Be aware of the new deadline extensions for employees experiencing a COBRA event after March 1st, and ensure no one is denied COBRA enrollment for failure to elect within 60 days of their termination, or failure to make the first premium payment within 45 days of the election.



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