

# COBRA

## Comparison of Federal and Texas Continuation Laws

|   | FEDERAL (COBRA)  | TEXAS   |
|---|--|---|
| Covered Employers and Plan Coverage             | Group health plans maintained by private-sector employers with 20 or more employees, employee organizations, or state or local governments; coverage must be identical to that available to similarly situated beneficiaries who are not receiving COBRA coverage under the plan (generally, the same coverage that the qualified beneficiary had immediately before qualifying for continuation coverage)   | Texas compels all employers, including those with 2-19 employees that are required to comply with state mandates to provide continuation coverage. This includes fully insured plans, as well as governmental entities.<br><br>Dental, vision and prescription plans are not required to be included. |
| Qualified Beneficiaries (Employee / Dependents) | Individual covered by a group health plan on the day before a qualifying event - either an employee, the employee's spouse, or an employee's dependent child. In certain cases, a retired employee, the retired employee's spouse, and the retired employee's dependent children may be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary. Agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries.   | Employees and dependents with at least 3 consecutive months of coverage prior to termination.   |
| Continuation Period                             | <p>18 months - COBRA beneficiaries generally are eligible for group coverage during a maximum of 18 months for qualifying events due to employment termination or reduction of hours of work.</p> <p>29 months - Disability can extend the 18 month period of continuation coverage for a qualifying event that is a termination of employment or reduction of hours. If certain requirements are met, the entire family qualifies for an additional 11 months of COBRA continuation coverage. Plans can charge 150% of the premium cost for the extended period of coverage.</p> <p>36 months - Certain qualifying events, or a second qualifying event during the initial period of coverage, may permit a beneficiary to receive a maximum of 36 months of coverage.</p> <p>36 months - Under COBRA, participants, covered spouses and dependent children may continue their plan coverage when they would otherwise lose coverage due to divorce (or legal separation) for a maximum of 36 months.</p> | 9 months (or 6 months where COBRA eligible) – Eligible employees and dependents must be offered up to a 9 month continuation period. Where eligible for COBRA, eligible employees and dependents must be offered 6 additional months following COBRA.   |

## FEDERAL (COBRA)

## TEXAS

### Qualifying Events

#### Qualifying Events for Employees:

- Voluntary or involuntary termination of employment for reasons other than gross misconduct – 18 months
- Reduction in the number of hours of employment – 18 months

#### Qualifying Events for Spouses:

- Voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct – 18 months
- Reduction in the hours worked by the covered employee – 18 months
- Covered employee's becoming entitled to Medicare – 36 months
- Divorce or legal separation of the covered employee – 36 months
- Death of the covered employee – 36 months

#### Qualifying Events for Dependent Children:

- Loss of dependent child status under the plan rules – 36 months
- Voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct – 18 months
- Reduction in the hours worked by the covered employee – 18 months
- Covered employee's becoming entitled to Medicare – 36 months
- Divorce or legal separation of the covered employee – 36 months
- Death of the covered employee – 36 months

#### Qualifying Events for Employees:

- Coverage ends for any reason other than involuntary termination of employment for cause

#### Qualifying Events for Spouses:

- Coverage ends for any reason other than involuntary termination of employment for cause
- Divorce or legal separation of group member
- Death of group member

#### Qualifying Events for Dependent Children:

- Coverage ends for any reason other than involuntary termination of employment for cause
- Divorce or legal separation of group member
- Death of group member

### Eligibility

To be eligible for COBRA coverage, must have been enrolled in employer's health plan when employed and health plan must continue to be in effect for active employees. COBRA continuation coverage is available upon the occurrence of a qualifying event that would, except for the COBRA continuation coverage, cause an individual to lose his or her health care coverage.

Eligibility is dependent upon whether the covered individual had been covered for at least 3 consecutive months prior to the termination of coverage.

### Notice Requirements

- Employers or health plan administrators must provide an initial general notice when employee is hired if entitled to COBRA benefits.
- When no longer eligible for health coverage, employer has to provide a specific notice regarding rights to COBRA continuation benefits.
- Employers must notify their plan administrators within 30 days after an employee's termination or after a reduction in hours that causes an employee to lose health benefits. The plan administrator must provide notice to individual employees of their right to elect COBRA coverage within 14 days after the administrator has received notice from the employer.
- Employee must respond to this notice and elect COBRA coverage by the 60th day after the written notice is sent or the day health care coverage ceased, whichever is later. Otherwise, employee will lose all rights to COBRA benefits. Spouses and dependent children covered under such health plan have independent right to elect COBRA coverage upon employee's termination or reduction in hours.

- The individual must apply for continuation coverage within 60 days of the later of: (1) termination of group coverage; or (2) the date on which the notice of continuation rights was received.
- Employers must provide a written notice to each covered individual that is affected by the termination of conversion or continuation privileges.
- Employers are required to notify individuals on continuation coverage that they may be entitled to coverage under the Texas Health Insurance Risk Pool. This notice must be sent at least 30 days prior to the end of the continuation period applicable to the individual.

|                           | FEDERAL (COBRA)   | TEXAS  |
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| Termination of Coverage   | <p>Coverage begins on the date that coverage would otherwise have been lost by reason of a qualifying event and will end at the end of the maximum period. It may end earlier if:</p> <ul style="list-style-type: none"> <li>• Premiums are not paid on a timely basis.</li> <li>• The employer ceases to maintain any group health plan.</li> </ul> <p>After the COBRA election, coverage is obtained with another employer group health plan that does not contain any exclusion or limitation with respect to any pre-existing condition of such beneficiary. However, if other group health coverage is obtained prior to the COBRA election, COBRA coverage may not be discontinued, even if the other coverage continues after the COBRA election.</p> <p>After the COBRA election, a beneficiary becomes entitled to Medicare benefits. However, if Medicare is obtained prior to COBRA election, COBRA coverage may not be discontinued, even if the other coverage continues after the COBRA election.</p> | <p>Continuation coverage must be allowed to continue until the earliest of the following:</p> <ul style="list-style-type: none"> <li>• the date coverage would end due to the individual's failure to pay required premiums;</li> <li>• the group policy terminates;</li> <li>• the individual becomes eligible for Medicare or similar benefits under another plan;</li> <li>• the individual becomes eligible for coverage under a state or federal law other than COBRA.</li> </ul> |
| Conversion Rights         | <p>Some plans allow participants and beneficiaries to convert group health coverage to an individual policy. If this option is generally available from the plan, a qualified beneficiary who pays for COBRA coverage must be given the option of converting to an individual policy at the end of the COBRA continuation coverage period. The option must be given to enroll in a conversion health plan within 180 days before COBRA coverage ends. The premium for a conversion policy may be more expensive than the premium of a group plan, and the conversion policy may provide a lower level of coverage. The conversion option, however, is not available if the beneficiary ends COBRA coverage before reaching the end of the maximum period of COBRA coverage.</p>   | <p>The State of Texas mandates that individuals "shall have the option to convert or continue insurance" after the expiration of COBRA coverage.</p> <p>Insurers may offer a conversion policy without evidence of insurability if a written application and a first premium payment are made no later than 31 days after the date coverage terminates.</p>  |
| Other                     |   | <p>Through the Texas Health Insurance Risk Pool (Health Pool), the State of Texas offers insurance to Texans who cannot find coverage due to a preexisting condition and to certain residents who have recently lost coverage.</p> <p>Note that special rules apply to continuation coverage under the laws of the State of Texas when loss of coverage is due to a labor dispute.</p>   |
| Applicable Statutes       | IRC § 4980B, ERISA §601 et seq.   | Tex. Ins. Code Title 8; Tex. Admin. Code Title 28  |
| Government Agency Contact | Depts. of Labor and Treasury (private sector plans); Dept. of Health and Human Services (public sector plans)   | Texas Department of Insurance  |

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# COBRA

## Update of Federal COBRA

### FEDERAL (COBRA)

#### COBRA Premium Subsidy

The American Recovery and Reinvestment Act of 2009 (ARRA) created new temporary rights to COBRA premium assistance for employees and their dependents who are involuntarily terminated from employment between September 1, 2008 and December 31, 2009.

**Eligibility/Premium Assistance:** An individual who is involuntarily terminated from employment between September 1, 2008 and December 31, 2009 is eligible for a 65% government COBRA premium subsidy for up to 9 months of the maximum COBRA coverage period, or until eligibility for other group health plan coverage or Medicare, if earlier.

**Extended Election Period:** If an employee who is involuntarily terminated from employment on September 1, 2008 or later does not have a COBRA election in effect on February 17, 2009, the date of enactment of ARRA, the individual may elect COBRA coverage during a special extended election period which begins on February 17, 2009 and ends 60 days after the date on which notification is provided to the individual. COBRA coverage would begin with the first period of coverage after February 17, 2009 (generally, March 1) and would continue for the maximum period of coverage that would have been required if COBRA had been earlier elected.

**Plan Enrollment Option:** A plan may permit such individual to enroll in different coverage if offered to active employees, is major medical coverage, and the premium does not exceed the premium of the individual's prior coverage.

**Notice Provisions:** ARRA requires a number of new notices. The DOL has created model form notices. The required new notices include an additional notification to all individuals who become entitled to elect COBRA between September 1, 2008 and December 31, 2009 and a notice to eligible individuals of the extended election period. Additionally, if receiving premium assistance, the individual is required to notify the plan in writing when no longer eligible for premium assistance.

**APPLICATION TO STATES:** Continuation coverage under a state program providing comparable coverage (i.e., state "mini-COBRA" laws applicable to employers with fewer than 20 employees) is subject to the COBRA premium subsidy and notice provisions of ARRA. ARRA does not change any requirement of a State continuation coverage program. ARRA only allows Assistance Eligible Individuals who elect continuation coverage under State insurance law to receive a premium reduction for up to 9 months. It also allows Assistance Eligible Individuals to switch to other coverage offered to active employees if permitted by the plan provided that the new coverage is no more expensive than the prior coverage. States may, but are not required to, offer an extended election period.

NOTE: Texas law provides for an extended election period.