



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

March 1, 2021

EBSA Notice and COBRA Extension Expiration

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Early Friday, the Employee Benefits Security Administration (EBSA) released [Notice 2021-01](#) (the Notice) providing guidance to employers and COBRA administrators on the duration of the [previously-issued COVID-19-related relief](#) suspending, among other things, certain COBRA-related deadlines (referred to herein as COBRA Relief).

This COBRA Relief continues until sixty (60) days after the announced end of the COVID-19 National Emergency or such other date announced by the relevant Agency or Agencies in a future notification (the Outbreak Period) or the expiration of the statutory one-year limitation imposed under ERISA and the Internal Revenue Code that applies to the suspended COBRA-related deadlines. However, with the COVID-19 crisis continuing, there have been many questions regarding when the Outbreak Period will expire, and how the one-year statutory limitation should be applied. Up until now the Departments of Labor (DOL) and Treasury (together, the Departments) have been silent on the application of this one-year limit.

The Notice suggests that the one-year limit applies on an individual basis, and its application to individuals will depend on whether their COBRA-related deadline (Event) (i) began within 60 days prior to March 1, 2020; (ii) began sometime between March 1, 2020 and February 28, 2021; or (iii) begins on or after March 1, 2021.

Individuals with an Event Occurring Within 60 Days Prior to March 1, 2020

The end of the tolling period has implications for eligible participants and beneficiaries who experienced a COBRA-qualifying event and whose time period to elect COBRA coverage began within 60 days prior to March 1, 2020 (e.g., on or after January 1, 2020). Although the election time period for these individuals started running prior to March 1, 2020, it effectively was stayed during the period between March 1, 2020 through February 28, 2021, and they may still have some time remaining to elect.

Example: Assume plan participant Bob experienced a COBRA-qualifying event in early January 2020 and that his COBRA election period started running on January 15, 2020. As of March 1, 2020, 46 days of that election period had passed. It then was “paused” between March 1, 2020 through February 28, 2021. Bob (and his spouse and eligible dependents, if any) therefore still has 14 days, starting March 1, 2021 (until March 14, 2021) to make a COBRA election, and 45 days following his election to pay the premiums then due. If he makes an election and pays all of the retroactive premiums due in a timely manner, his COBRA coverage will be retroactive to January 15, 2020.

Individuals with an Event Occurring Between March 1, 2020 and February 28, 2021

Since the National Emergency first became effective as of March 1, 2020 (which triggered the start of the Outbreak Period), for those individuals who had an Event that began running on or after to March 1, 2020, that limit will end on the earlier of (i) the end of the Outbreak Period; or (ii) the expiration of the one-year tolling period that began on the date of the individual's Event (the Individual Tolling Period) .

Example: Susan is covered by her employer's group health plan and experiences a COBRA-qualifying event on April 30, 2020. Assuming notice was provided on the date of her COBRA-qualifying event, ordinarily, Susan would have 60 days to make her COBRA election (the 60-day period between May 1, 2020 and June 29, 2020). However, the COBRA Relief required that the period from March 1, 2020 until the end of the Outbreak Period be disregarded or suspended. So, for Susan, the 60-day period does not start to run until the end of the Outbreak Period or the expiration of the Individual Tolling Period, whichever is earlier. Susan's Individual Tolling Period would end on April 30, 2021.

Assuming the Outbreak Period does not end before May 1, 2021, Susan's Individual Tolling Period applies. Susan's COBRA election period will begin running on May 1, 2021 and she will have until June 29, 2021 (60 days) to make a COBRA election (and, if she makes an election and pays all of the retroactive COBRA premiums due in a timely manner, her COBRA coverage will be retroactive to May 1, 2020). If, however, the Outbreak Period ends prior to May 1, 2021, her 60-day period will begin running as of the date the Outbreak Period ends.

Individuals with an Event Occurring On or After March 1, 2021 and Before the End of the Outbreak Period

The Notice suggests that individuals who have an Event on or after March 1, 2021, and before the end of the Outbreak Period will be entitled to the same relief as others; in other words, COBRA-related deadlines subject to the COBRA Relief would be delayed until the earlier of (i) the end of the Outbreak Period; or (ii) the expiration of the Individual Tolling Period, beginning on the date of their Event.

Example: Mary is covered by her employer's group health plan and experiences a COBRA-qualifying event. She receives her election notice on June 1, 2021 (which is also her loss of coverage date). Ordinarily, Mary would have 60 days to make her COBRA election (the 60-day period between June 2, 2021 and July 31, 2021). However, the COBRA Relief required that the 60-day election period be suspended for the Outbreak Period, not to exceed the Individual Tolling Period.

Assuming the Outbreak Period does not end sooner, the one-year Individual Tolling Period applies as confirmed by the Notice. Mary's COBRA election period will begin running on June 1, 2022 and she will have until July 31, 2022 (60 days) to make a COBRA election (and, if she makes an election and pays the retroactive COBRA premiums due in a timely manner, her COBRA coverage will be retroactive to her loss of coverage as of June 1, 2021). If, however, the Outbreak Period ends prior to June 1, 2022, her 60-day period will begin running as of the date the Outbreak Period ends.

Note that the end of the tolling period affects not only COBRA initial election and premium payment deadlines, but also other deadlines including COBRA monthly premium deadlines (and grace periods) that became due during the tolling period, and deadlines for filing claims and appeals under employee benefit plans.

Employers and COBRA administrators may wish to review any previously-issued disclosures for participants who experienced a COBRA-qualifying event during the time period between January 1, 2020 and February 28, 2021. Those disclosures, such as COBRA election notices, may need to be reissued or amended if they failed to provide accurate information regarding the time in which participants and beneficiaries were required to take action. The Notice states that employers and plan fiduciaries would be well advised to act in the best interest of workers and their families, and to make reasonable accommodations to prevent the loss of benefits or undue delay in payment of benefits. Employers are encouraged to seek competent counsel with respect to these issues and their COBRA obligations.

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