

Being Nice Is Not Always The Best Move With COBRA

By Juli Hanshaw



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“Be nice” is what we tell our children and what we were told as children. It usually works. With COBRA, however, the key phrase should instead be “stick to the rules.”

Being “nice” with COBRA rules causes a precedent. To set a precedent means that the decision you make for this instance will need to be applied to any future instances.

That may *not sound* too bad, but what may *not be nice* is the insurer or stop-loss insurer denying claims resulting from the exception, thus setting the employer up to self-insure an individual because it was trying to be nice.

Here are a few examples of where being “nice” doesn’t pay: (1) paying COBRA premiums; (2) secondary events; (3) disability awards; (4) providing COBRA beyond 18 months; (5) late elections; and (6) offering COBRA to non-QBs.

Paying COBRA Premiums

COBRA regulations indicate that a qualified beneficiary (QB) has set time frames to make COBRA premium payments. The first time frame is 45 days from the election date, then a 30-day minimum grace period for each monthly COBRA payment thereafter.

If a QB requests acceptance of an untimely payment, should you be “nice” and allow? In most cases, this would require an employer to stick to the rules and not allow additional time.

Note. There are a few instances where you may go outside these time frames, such as incapacity and insignificant premium underpayments. If you have questions on those, please refer to the *Guide* articles: *Coming Up a Little Short: How to Handle Insignificant Premium Underpayments* (April 2006) and *Incapacity Is Serious Matter for Employers* (April 2009), as well as Tab 1400.

Secondary Events

A second qualifying event that occurs within the initial 18-month period adds another 18 months to COBRA coverage. The secondary event must be one of the following events: death of the covered employee, divorce or legal separation, a dependent child ceasing to be a dependent or the covered employee’s Medicare entitlement. These events are not available to the covered employee, only to the dependents or a spouse.

To be eligible for the additional time on COBRA coverage, the QB has 60 days to notify the plan administrator of the secondary event. If the employer/plan administrator has not provided notice of this procedure, the 60-day clock does not begin until that is provided to the QBs. If a QB notifies the employer/plan administrator outside the 60-day time frame, should you be “nice” and allow? After confirming that the proper notice procedures were provided timely, it’s best to remain within the 60-day time frame.

Disability Awards

These can be even trickier for an employer as there are lots of dates to review on this COBRA extension. This extension allows a QB to lengthen COBRA from 18 months to 29 months, but only if the following requirements are met:

- The original qualifying event was the employment termination or reduction of hours.
- The QB has to be deemed disabled, according to the Social Security Administration, any point up to the 60th day of COBRA coverage.
- The QB must notify the plan administrator of the disability determination within 60 days after the latest of: (a) the determination date; (b) the qualifying event date; (c) the loss of coverage date;

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or (d) the date that the QB is informed of the duty to notify.

- The QB must notify the plan administrator of the determination before the end of the 18-month period.

The employer can charge up to 150 percent of the COBRA premium during the disability extension period. It's important to remain consistent with this rule as well. It is best to charge all QBs the 150 percent or the determined amount for the disability extension period and remain constant going forward with this amount.

Providing COBRA Beyond 18 Months

COBRA rules have set time frames for each event. Termination (voluntary and involuntary) and reduction of hours provide a QB with 18 months of COBRA coverage. Other events, such as the death of employee, divorce and dependent ceasing to be a dependent provide 36 months of COBRA coverage for the QBs. An employer may want to be “nice” and allow a QB to stay on the plan for more than is set within the COBRA regulations, but again this may not be a good plan, especially if the insurer will not allow it.

Late Elections

A QB is provided a qualifying event notification that includes a COBRA election form. The election must be submitted to the plan administrator before the date that is 60 days after the later of:

- the date the QB would lose coverage due to the qualifying event; or
- the date notice is provided to the QB about COBRA coverage rights.

The important aspect of this is to view the postmark date on the election as the official date to use in these instances. It is a good practice to request the election in writing. Then an employer has documentation to provide an insurer that the election was within the proper time frames, should it ever be questioned.

Note. There are few instances where this time frame may be extended. Please review the *Guide* article, “*A Day Late or a Dollar Short*” (April 2010), which reviews these instances.

Offering COBRA to Non-QBs

When a qualifying event occurs causing a loss of coverage, an employer must offer COBRA to all QBs. There

could be some places where it may not be as easy as it sounds. A QB is any individual who, on the day before a qualifying event, is covered under the group health plan as the covered employee, covered spouse or covered dependent child. Any child born to or placed for adoption with the covered employee during a period of COBRA coverage also becomes a QB.

While this usually is easy enough, many employers are now allowing domestic partners on the health plan. The federal Defense of Marriage Act (DOMA) states the word “marriage” only means a legal union between one man and one woman as husband and wife. DOMA supersedes any state domestic partner law when it comes to COBRA and therefore a domestic partner is not required to be offered COBRA.

Note. See the *Guide* article, *COBRA QB Dilemma: Who's on First, What's on Second* (December 2006) for more details on the QB definition or *The Undocumented Alien Question: To Offer or Not Offer COBRA* (August 2006).

Things to Consider When Being Nice

When an employer is confronted with being “nice,” see the sidebar for a few items to keep in mind. While all these areas sound like something that you would want to allow because being nice leads people to like you, it may not be sound advice to follow. Doing a good deed for another may add meaning and significance to your life, but it may also put the employer in a position where the insurer will not follow those “nice” rules and then you are on the “hook” for you being “nice.” The best advice is to keep those generous acts to other areas and outside of COBRA administration. 🏠

Steps to Take Before Being Nice in COBRA Administration

- First, the employer should confirm with the insurer if making exceptions outside the COBRA guidelines would be allowed.
- Review whether making the decision would have a negative or positive impact on setting a precedent and the likelihood of the circumstances being repeated.
- Consider the negative and positive consequences of following the rule.
- Finally, make sure to document and communicate the decision with everyone involved.