

COVID-19 “Extension” of COBRA Deadlines May End Sooner Than Expected

In recently issued joint guidance, the Department of Labor, the Department of the Treasury and the Internal Revenue Service confirmed the indirect extension of the COVID-19-related deadlines for electing and paying for COBRA coverage that were first announced in March 2020. In what may have been a surprise to some, the agencies also confirmed that the mandated extensions do not extend beyond 12 months. For former employees who faced one or more COBRA deadlines early in 2020, the mandated extensions may have already expired or may expire sooner than expected.

When the COVID-19 national emergency began last spring, the agencies issued guidance that generally required group health plans to ignore the COVID-19 “Outbreak Period,” when determining the election and premium payment deadlines for COBRA coverage. Because the “Outbreak Period” is ongoing, many plan sponsors and COBRA administrators assumed that the COBRA deadline extensions (really a pause on the running of the COBRA “clock”) would continue until the announced end of the outbreak.

However, because agency authority to extend/pause the deadlines is limited by statute to a one-year extension/pause, the latest guidance provides that the disregarded period need not exceed one full year. Therefore, a plan may provide that disregarded periods will end on the earlier of (a) one year from the date the affected individual was first eligible for relief from meeting an applicable deadline, or (b) 60 days after the announced end of the COVID-19 national emergency (the end of the Outbreak Period). On the applicable end date, the time period (i.e., the COBRA “clock”) will resume running.

For example, if a former employee would have been required to make a COBRA coverage election by March 1, 2020, the agency guidance delays that election requirement until February 28, 2021, which is the earlier of one year from March 1, 2020 or the end of the Outbreak Period (which remains ongoing). Similarly, if a qualified beneficiary would have been required to make a COBRA coverage election by March 1, 2021, the agency guidance delays that election requirement until the earlier of one year from that date (i.e., to March 1, 2022) or the end of the Outbreak Period.

The one-year limit on disregarded periods should help plan sponsors limit the tracking of COBRA election and payment deadlines. On the other hand, disregarded periods and deadlines will have to be determined on an individual basis. This is likely to cause confusion among participants and plan sponsors alike.

Accordingly, the agencies suggest that plan fiduciaries should make reasonable accommodations to prevent the loss of, or undue delay in, the payment of benefits and should take steps to minimize the possibility of individuals losing benefits or coverage because of a failure to comply with the modified timeframes. For example, where the plan administrator or other responsible fiduciary knows, or should reasonably know, that the end of the relief period for an individual action is exposing a participant or beneficiary to the risk of losing benefits or coverage under the plan, the administrator or other fiduciary should consider affirmatively sending a notice to the individual regarding the end of the relief period.

COBRA notices, communications to participants, contracts with insurers, claims administrators and COBRA administrators, and COBRA procedures should also be reviewed and updated as necessary to ensure that coverage is offered and ends as all parties expect. Plan documents and summary plan descriptions may need to be updated too.

In addition to the guidance on COBRA time periods, the agencies confirmed that the previously mandated “pause” on the running of time periods that apply to filing claims for benefits and to exercising special enrollment rights will also expire on the earlier of (a) one year from the date the affected individual was first eligible for relief from an applicable deadline, or (b) the end of the Outbreak Period. On the applicable end date, the time period will resume running. Related documents, notices and procedures for these timeframes should also be reviewed and modified as necessary.

MORE COBRA GUIDANCE TO FOLLOW

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021. The new legislation includes up to six months of COBRA premium relief for individuals involuntarily terminated from employment and eligible for COBRA during the period that begins on April 1, 2021 and ends on Sept. 30, 2021. The new legislation also includes a new (second) COBRA election period, increases the dependent care exclusion for 2021 and requires certain notifications to affected individuals.

We will provide a more detailed summary of the new legislation in a separate Employee Benefit Information Memo.

If you have any questions, please contact [Stephen C. Daley](#), any attorney in our [Employee Benefits and Executive Compensation practice](#) or the attorney at the firm with whom you are regularly in contact.



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