

COBRA:

The Developing Law



EBIA

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What's New in the 2nd Qtr. 2017 Edition

This What's New section highlights the changes made in the last quarter to the *COBRA: The Developing Law* guidebook—the authoritative guidebook for employers, administrators, and advisors.

Also see the 2nd Qtr. 2017 *Current Developments* newsletter, which can be accessed under the Bookmarks tab. The *Current Developments* newsletter summarizes important legal developments that occurred during the quarter.

- **Section IV—*What Employers Are Subject to COBRA?***
 - IV.E—*COBRA and Professional Employer Organizations (PEOs)*. A new text box highlights a recent case in which a staffing company with fewer than 20 employees at its corporate headquarters did not qualify for COBRA's small employer exception because of its numerous staffing workers outsourced to other locations.
- **Section VII—*Qualifying Events: What Triggers COBRA?***
 - VII.B.5—*Gross Misconduct Exception*. In our Table of Gross Misconduct Cases, we note that an appellate court has revived the previously dismissed COBRA claim of a bakery manager who was terminated for stealing cake from the bakery's "stales cart."
 - VII.M—*Special Issues: Severance Agreements and Severance Pay*. We have updated our discussion and examples of the various options for coordinating COBRA requirements with provisions under a severance agreement. We also explain how employer-subsidized COBRA as part of a severance agreement may complicate a qualified beneficiary's ability to acquire individual coverage through an Exchange when the subsidy expires.
- **Section XI—*When and How Does COBRA Apply to Health FSAs and HRAs?***
 - XI.A.2—*What Is an HRA?* We have provided more detail about qualified small employer health reimbursement arrangements (QSEHRAs) and emphasize that they are not group health plans subject to COBRA.
 - XI.C.2—*Each Qualified Beneficiary Has an Independent Right to Elect COBRA to Continue Health FSA Benefits*. We have added a text box addressing a qualified beneficiary's right to continue COBRA coverage for the maximum coverage period even if another family member's COBRA coverage is terminated early due to the acquisition of coverage under a new group health plan.
- **Section XIX—*COBRA Elections by Qualified Beneficiaries***
 - XIX.I—*Qualified Beneficiaries May Waive COBRA*. We have updated our discussion of COBRA waivers, including offers of alternative coverage as inducements to waive COBRA and compliance concerns for alternative coverage arrangements.
- **Section XXVI—*Special Issues: COBRA and Health Care Reform***
 - XXVI.N—*Health Insurance Exchanges*. We have updated our discussion of Exchange enrollment periods, highlighting proposed changes to upcoming annual enrollment dates.
 - XXVI.P—*Reporting Under Code §§ 6055 and 6056*. We have streamlined our discussion of the reporting requirements for former employees and other qualified beneficiaries.

- **Section XXXIV—Special Issues: The Health Coverage Tax Credit (HCTC) and the Special Second COBRA Election Period.**
 - XXXIV.A.1—*HCTC Election Required*. We discuss recent IRS guidance allowing HCTC-eligible individuals to claim the credit for months in 2016 anytime before the expiration of a three-year statute of limitations. The IRS notes that eligible taxpayers may not have been aware of the requirement to affirmatively elect the HCTC for coverage provided in 2016.
 - XXXIV.A.4—*Transition Rules*. We note the issuance of the 2016 versions of Form 8885 (“Health Coverage Tax Credit”) and Instructions.
- **Section XXXVI—Uniformed Services Employment and Reemployment Rights Act (USERRA).**
 - XXXVI.A—*Introduction to USERRA and Its Continuation Requirements for Health Plans*. We have updated this subsection focusing on the basics of USERRA and its application to group health plans.
 - XXXVI.B—*Health Plan Continuation Coverage When Plan Is Subject to COBRA*. We have revised the discussion in this subsection to reflect changes made to our Sample USERRA Notice and Guide.
- **Appendix Tab 10—Sample Documents.** The Sample USERRA Notice and Guide have been revised to more clearly reflect the rights and options of individuals eligible to elect continuation coverage under both COBRA and USERRA.
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Substantive Changes to the Appendix:

- **Tab 10—Sample Documents**
 - Updated TOC
 - Updated USERRA Notice and Guide

Lots More to Come! From the feedback we’ve received, we know that our manuals are the premier group health plans resources in the country. But here at EBIA we’re not satisfied. We are constantly striving to make the manual even better. In upcoming editions, look forward to complete coverage of all legal developments affecting COBRA compliance, and to our further analysis of existing law, with more examples and Q/As, etc.

EBIA Weekly. Keep up with new legal developments as they occur: sign up now for the EBIA Weekly, a free e-mail newsletter, at <https://tax.thomsonreuters.com/checkpoint/EBIA>.

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