

# Multiemployer Alert

Update on Issues Affecting Taft-Hartley Plans

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## Extension of deadlines for COBRA elections and COBRA payments

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On April 28, 2020, the Departments of Labor and Treasury and the Internal Revenue Service jointly issued guidance extending certain deadlines related to COBRA continuation coverage. These guidelines were published in the Federal Register on May 4, 2020.

The extension of deadlines described in this Multiemployer Alert are based on the “Outbreak Period,” which is defined as the period from March 1, 2020, until 60 days after the federal government declares the end of the National Emergency, or other such date announced by the agencies.

The guidance issued by the agencies also includes suspension of time limits related to HIPAA special enrollment rights and filing benefit claims, appeals, and external reviews during the Outbreak Period. These time limits do not begin to run until the end of the Outbreak Period.

### COBRA election period

When a beneficiary loses health coverage due to a COBRA qualifying event, they must be given the option to continue coverage under COBRA. Under normal circumstances, the election for COBRA coverage must be made within a 60-day period from the date of the COBRA qualifying event.

Under the guidance issued by the agencies, the 60-day COBRA election deadline is disregarded during the Outbreak Period.

**Example:** Suppose a qualified beneficiary became eligible for COBRA coverage effective April 1, 2020, and the National Emergency is declared to be ended on June 30, 2020. Then the Outbreak Period will continue for 60 days after June 30, 2020, and end on August 29, 2020. The qualified beneficiary is then eligible to elect COBRA coverage as late as October 28, 2020, which would be retroactive to April 1, 2020.

### COBRA payment deadlines

When a qualified beneficiary elects COBRA coverage, they typically must pay premiums to the plan sponsor for such coverage. Under normal circumstances, the first payment for COBRA coverage is required within 45 days after the COBRA election, and continuing payments must be made within 30 days from the first of the month for which the coverage is being purchased.

Under the guidance issued by the agencies, the COBRA payment deadlines are disregarded during the Outbreak Period

**Example (cont.):** If the COBRA election is made on October 28, 2020, the first COBRA payment would be due 45 days after the election, which would be December 12, 2020. In this example, the first payment would include payments for the eight months from April to November 2020. If fewer than eight months are paid, the payments would be applied to the months in order from April 2020 onward.

If the member or dependent had elected COBRA coverage on April 15, 2020, for coverage to be effective April 1, 2020, the first COBRA payment would be due 45 days after the end of the Outbreak Period. In this example, the payment deadline would be October 13, 2020, and would require payments for the six months from April 1, 2020, to September 30, 2020.

## Potential impact on plan sponsors

### Selection issues

Qualified beneficiaries now have significantly more time to determine whether simply paying past claims (following termination of group-sponsored coverage) without insurance will cost less than paying COBRA premiums plus any applicable cost sharing. This applies to both those who are newly eligible for COBRA coverage since March 1, 2020 (by delaying the decision to elect) as well as those who already elected COBRA coverage (by delaying payment of premiums). In addition, previously covered employees, spouses, and children may all elect COBRA coverage separately. In cases where COBRA rates vary by single and family tiers, the extended deadlines may also provide an additional selection opportunity by covering only the family member(s) with claims and paying a lower premium.

### Administrative burden

Plan administrators will carry an additional burden of how to handle claims submitted during this extended period. They may not know for several months whether an individual will ultimately pay for coverage for the applicable time period or not. There may also be significant claims submitted for reimbursement long after being incurred by those who delay election.

### Stop-loss

Claims may be held over several months during this extended period and submitted all at once for reimbursement. For certain stop-loss contracts that only cover claims incurred and paid during the plan year or with limited months of runout, claims that might otherwise have been reimbursed through stop loss may fall outside of the contract and no longer be eligible for reimbursement. For more comprehensive policies, such as "paid-in-12," this could actually lead to additional reimbursements for claims that might otherwise have been spread across more than one plan year.

In order to best manage compliance with COBRA regulations, we encourage plan sponsors to work collaboratively with their carriers, third-party administrators, legal counsel, and consultants.



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