

HEALTH INSURANCE, COBRA & STRIKE RIGHTS

In strikes where the employer attempts to pull health insurance coverage, COBRA requires a fourteen (14) day notification by the employer of employee rights that include the employee's option to elect to pay for and retain health insurance coverage for up to eighteen (18) months. Within sixty (60) days of receipt of the notification, employees must decide whether to elect to receive coverage for themselves and their dependents. Within forty-five (45) days after the date the employee elects COBRA coverage, the employee must pay an initial premium, which includes the period from the qualifying event to the date of election and any monthly premiums which are regularly due. The COBRA premium may not exceed the employer's cost of premiums by more than two (2) percent. As you can see, quite a bit of time passes before a striking employee would have to pay any premiums for health insurance coverage. Generally, when coverage becomes an issue in a strike, it is commonly reinstated retroactively back to the date of the strike as a part of the settlement agreement. For more detailed information regarding COBRA rights, staff should contact the IFT benefits specialist.

Health Insurance During a Strike – Frequently Asked Questions

Will my health insurance be cancelled?

In some cases involving a strike your employer may cause your health insurance to be temporarily suspended. In other cases, there is no interruption in health care coverage.

How will I know?

Your Union will try to find out if that is the employer's intent. Your employer may send you a notice, and the insurance company will be required to send a notice if it is suspended. However, you may wish to assume the worst.

What period of time will I be without coverage?

In a strike situation, you will have rights which will allow you to reinstate your insurance coverage retroactively back to the start of the strike. Once the strike is over, your coverage will resume as if it had never left.

What do I have to do to reinstate my coverage back to the start of the strike?

You have to give notice to your insurer that you wish to exercise your COBRA rights. Often, this is on a specified form sent to you by the insurance company at that time. COBRA rights are explained in a separate letter to members.

Should everyone elect (say yes to) COBRA coverage?

Different circumstances will affect your decision. If you incur no medical expenses during the period of the strike, there is no reason to pay for coverage during that period of time. Sometimes people are able to get things taken care of before the strike or wait until after the strike in order to avoid being faced with fronting the healthcare money as if you had no insurance. Of course, those that incur significant costs that are covered by insurance during the strike should declare for COBRA in order to be reimbursed.

What are the timelines?

Employer notifies insurer that striking employees are no longer covered within 30 calendar days of the first day of the strike. The insurer can immediately suspend your insurance at that time. (Employers often do this immediately). The insurer must prepare and send you a COBRA notice within 14 calendar days of being notified. The employee has 60 calendar days from the time of receiving the notice to declare that they want coverage. Strikes are almost always settled by this deadline. The employee still has another 45 calendar days from the election to actually make the payment. Those who declare but do not pay lose coverage during the period of the strike.

When will my coverage reinstatement occur?

When you elect COBRA, it is retroactive to day one, pending receipt of payment. If the strike ends and you go back to work, coverage resumes on the day you go back. Negotiations may have an impact on all of this.

Is there a period without insurance at which I have to worry about pre-existing conditions?

Due to the elimination of pre-existing conditions exclusions under the Affordable Care Act, this is not an issue. Insurers are no longer allowed to consider or exclude medical treatment for pre-existing conditions.

How much does COBRA coverage cost?

The COBRA premium cost will depend on whether or not you have dependent coverage. The cost may not exceed the total employer's/employee's cost of premiums by more than two (2) percent. The formal notice will state the exact amount.

What factor do negotiations play in all of this?

The final settlement might reduce or eliminate what people owe for elected COBRA coverage, or it might not. It is impossible to know prior to settlement.

Ask your IFT Field Service Director or local contact if you have further questions.

DATE: October 12, 2005
TO: Bob Shaevel
IFT
FROM: Robert A. Seltzer
Cornfield and Feldman
RE: COBRA Issues in the Event of a Strike

A strike may trigger the right to elect COBRA coverage if it results in a loss of group health plan coverage. If an employee elects COBRA coverage, it must be provided retroactive to the date coverage otherwise would have terminated. Therefore, striking employees may use COBRA to continue their medical coverage during the strike period.

The Election Period and Election Notices

In the event of a strike, the COBRA election period would begin on the date that the employees lose coverage as a result of the strike, which, depending on the plan document, might be the day of the strike, or more likely, the last day of the current month. The election period would not end before 60 days from the later of (1) the date coverage is lost as a result of the strike, or (2) the date notice is provided to the employees (and other qualified beneficiaries) of their right to elect COBRA coverage.

The plan administrator is required to provide COBRA Election Notices within 14 days of the date he becomes aware of the qualifying event.

(Note: Employees are not required to wait until they receive Election Notices to elect COBRA coverage. They may elect COBRA coverage at any time during the election period. However, the Department of Labor's COBRA regulations state that a plan may require that the election be in writing on a specific form, provided that this requirement is explained in the Election Notice as well as in the plan's Summary Plan Description.)

45-Day Grace Period for Initial Premium Payments

In addition to the minimum 60-day election period, if COBRA coverage is elected, the employee is allowed another 45 days from the date of election in which to make the initial premium payment. Thus, a striking employee can elect COBRA coverage but wait another six weeks (i.e., the 45-day grace period for submission of the initial premium payment) before making a final decision whether to pay for the coverage or to relinquish the opportunity to purchase it.

Coverage During the Election Period

Under the COBRA regulations, during the election period, the plan sponsor is free either to drop the employee from the plan and then reinstate the employee if he or she elects COBRA coverage, or to continue coverage on a conditional basis and retroactively cancel it if COBRA coverage is not elected.

However, once the employee elects COBRA coverage, such coverage is then in force. Plans that have chosen the drop-and-reinstate method of administering coverage during the election period cannot wait until the initial premium is paid to reinstate coverage. This is true even though the employee has an additional 45-day grace period in which to make the initial premium payment. Of course, if the initial premium payment is not made on a timely basis, COBRA coverage may be terminated retroactively, and the employee would be personally liable for any medical costs incurred.

Practical Guidance

In the event of a strike resulting in the loss of group health plan coverage and in which the employer has chosen to drop coverage during the COBRA election period, those employees requiring immediate medical coverage should elect COBRA coverage as soon as possible. They will have up to 45 days from the date of their election to make their initial premium payment. Those employees not in need of immediate medical coverage may choose to wait and see if they need to elect coverage – they will have until the end of the minimum 60-day election period to decide.

<Date>

TO: <Name>, Field Service Director
Illinois Federation of Teachers

FROM: Robert A. Shaevel
Research Director / Employee Benefit Specialist
Illinois Federation of Teachers

RE: COBRA Rights During A Strike

COBRA (*Comprehensive Budget Reconciliation Act of 1985*) amended sections of *ERISA*, the *Public Health Safety Act* and the *Internal Revenue Code*. **COBRA** was passed by congress to ensure that employees have the right to continue, for a time¹, their coverage under an employer-sponsored health plan after a *qualifying event*².

Notice

Once a *qualifying event* occurs, the statute requires the employer to notify the plan administrator within thirty (30) days. The plan administrator must then send a notice to the employees and family members of the qualifying event within fourteen (14) days.

A strike is a *qualifying event*.

Election

The *election* period is the time frame during which each *qualified beneficiary*³ may choose whether to continue health care coverage under the employer's plan. *Qualified beneficiaries* have a sixty (60) day period after receiving notice to elect whether to continue coverage. COBRA coverage is retroactive if elected and paid for by the *qualified beneficiary*.

Payment for COBRA Coverage

The initial premium payment for COBRA coverage must be made within forty-five (45) days after the date of the COBRA election. The premium payment must cover the period from the date of the election retroactive to the date of the qualifying event.

The premium amount is the employer's share of the premium, the employee's share of the premium, and can include an administration fee of not more than two (2%) per cent.

Enforcement

Various portions of COBRA are enforced by the Department of Labor, the United States Public Health Service and the Internal Revenue Service.

¹ The period of this continuation can vary based on the nature of the qualifying event, but is generally eighteen (18) months.

² A *qualifying event* is a termination of service, death of a spouse (for whom the remaining spouse received health care coverage), divorce, reduction of hours, or a strike.

³ Generally under COBRA, a qualified beneficiary is the employee and any dependents.

**TO: All Members
Illinois Federation of Teachers**

**FROM: Bob Shaevel
Research Director / Employee Benefit Specialist
Illinois Federation of Teachers**

RE: COBRA Rights During A Strike

With a possible strike looming, one of the major worries of many members is what will happen to health insurance and health care if a strike does occur.

First, not all employers cause health care to be interrupted immediately upon the start of a strike. In some cases, insurance continues without interruption either because the employer simply chooses not to cause the interruption, or because premiums have already been paid for a period of time, such as the remainder of the month.

Other employers will try to intimidate, scare, and punish striking workers and their families by determining that employees are no longer "eligible" for group insurance because you are no longer working. Fortunately, there is a federal law that protects you during this period of time. But it is complicated, and it may require you to fill out and submit forms or in some instances even make a payment in order to keep your coverage in continuous effect.

The law is commonly called **COBRA** (*Comprehensive Budget Reconciliation Act of 1985*). **COBRA** was passed by congress to ensure that employees have the right to continue, usually for 18 months, their coverage under an employer-sponsored health plan after a *qualifying event*. A *qualifying event* is a termination of service, death of a spouse (for whom the remaining spouse received health care coverage), divorce, reduction of hours, or a strike. Obviously that is way more than you would need in a strike setting.

Notice and Payment

Once a strike occurs, COBRA requires the employer to notify the plan administrator (insurance company) within thirty (30) days. The plan administrator must then send a notice to the employees and family members of the qualifying event within fourteen (14) days of receiving the news.

The worst case situation is that the employer will notify the insurance company immediately that you are no longer eligible. The insurance company would then *temporarily* suspend your insurance. During this time, if you get a prescription filled, see the doctor, go to the hospital, or get any medical treatment, you may be told that your insurance is not valid. In order to receive treatment or benefits, you may have to pay a substantial amount of money up front.

The insurance company would then prepare and send to you, often by certified mail, the COBRA notice, which gives you the option to continue uninterrupted coverage at your own expense. You have sixty (60) calendar days from the later of the beginning of the strike or the receipt of the notice to declare your intention to continue coverage.

You would then have another forty-five (45) days to pay the premium for the period of time you were deemed to be not eligible (while you were on strike). The premium amount is the employer's share of the premium, the employee's share of the premium, and can include an administration fee of not more than two (2%) per cent. Depending on the contract settlement and on how much towards premiums is deducted from your paycheck or paid by the employer, you may owe this amount to the insurance company to access those benefits, or it may be less.

Retroactivity

COBRA coverage is retroactive if elected and eventually paid. So any medical expenses incurred during the time on strike but before the election will be reimbursed to the employee at the same benefit levels as were in effect before the strike began.

Practical Guidance

Before the strike, you may wish to fill prescriptions and take care of any medical appointments and procedures over which you have scheduling control. You may wish to postpone elective medical activities during the period of the strike until the conclusion of the work stoppage.

In the event of a strike resulting in the loss of group health plan coverage and in which the employer has chosen to drop coverage during the COBRA election period, those employees requiring immediate significant medical coverage should elect COBRA coverage as soon as possible. You will have up to 45 days from the date of their election to make their initial premium payment. Those employees not in need of immediate medical coverage may choose to wait and see if they need to elect coverage – they will have until the end of the minimum 60-day election period to decide. If you incur no costs and the coverage lapse is less than sixty-three (63) days, there is no harm in failing to elect during that period.

Will my health insurance be cancelled?

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How will I know?

Your Union will try to find out if that is the employer's intent. Your employer may send you a notice, and the insurance company will be required to send a notice if it is suspended. However, you may wish to assume the worst.

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When will my coverage reinstatement occur?

When you elect COBRA, it is retroactive to day one, pending receipt of payment. If the strike ends and you go back to work, coverage resumes on the day you go back. Negotiations may have an impact on all of this.

Is there a period without insurance at which I have to worry about pre-existing conditions?

If you are without coverage for 63 days, pre-existing conditions might be a problem. In the extremely unlikely event that the strike has not ended in that time, those with preexisting conditions should be sure to elect COBRA coverage.

How much does COBRA coverage cost?

The COBRA premium cost will depend on whether or not you have dependent coverage may not exceed the total employer's/employee's cost of premiums by more than two (2) percent. The formal notice will state the exact amount.

What factor does negotiations play in all of this?

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